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**UNITED STATES DEPARTMENT OF THE ARMY
WASHINGTON, D. C. 20315**

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ATTENTION: PERSONNEL SECTION

FOR INFORMATION

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(30,641, 30,642)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 676

DIRECTION DER DISCONTO-GESELLSCHAFT, APPELLANT,

vs.

**UNITED STATES STEEL CORPORATION, PUBLIC TRUSTEE,
EGREMONT JOHN MILLS, ET AL., ETC.**

No. 677

BANK FUR HANDEL UND INDUSTRIE, APPELLANT,

vs.

**UNITED STATES STEEL CORPORATION, PUBLIC TRUSTEE,
ENGLISH ASSOCIATION OF AMERICAN BOND & SHARE-
HOLDERS, LIMITED, ET AL.**

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK**

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[fol. 1] **IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

Equity. No. 28-340

DIRECTION DER DISCONTO-GESELLSCHAFT, a Corporation, Plaintiff,

vs.

UNITED STATES STEEL CORPORATION, a Corporation; **PUBLIC Trustee**, a Corporation, and **Egremont John Mills**, **Walter Clarke**, **Morris Nathaniel Julius**, and **Donnell Shepard Post**, Copartners, Trading as **Marks, Bulteel, Mills & Co.**, Defendants

AMENDED BILL OF COMPLAINT

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The above named Plaintiff, for its Bill of Complaint herein alleges:

1. That Plaintiff, Direction der Disconto-Gesellschaft, is and has since August 1, 1914, been, a corporation duly organized by and existing under the laws of the Empire of Germany and a citizen of said Empire, having its principal place of business at Berlin, Germany.

2. That the Defendant, the United States Steel Corporation, is a corporation duly organized by and existing under the laws of the State of New Jersey and a citizen of said State, having its principal place of business therein; that the Defendant, Public Trustee, is a corporation sole created by and existing under the laws of the United Kingdom of Great Britain and Ireland, public office of said Kingdom having its principal offices at London, England; that the defendants, [fol. 2] Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, are co-partners, trading as Marks, Bulteel, Mills & Co., with principal place of business at London, England, and each is a citizen of England, residing at London, therein.

3. That this suit arises between citizens and subjects of foreign states and a citizen of a state of the United States, and that the value in controversy to the Plaintiff herein exceeds the sum of \$3,000.00, exclusive of interest and costs; that this suit involves a construction of a Treaty of the United States in that defendant, Public Trustee, insists that he has title to the shares herein involved by reason, among other things, of the Treaty of Berlin and the laws of the United States and thus has created a cloud upon plaintiff's title to said shares; that this suit also arises under the Constitution of the United States in that said Treaty of Berlin, in so far as it is relied upon by defendant to defeat plaintiff's title to said shares, would deprive plaintiff of its property without due process of law in violation of Amendment Five, of said Constitution of the United States.

4. That at the outbreak of war between Great Britain and Germany in 1914, Plaintiff owned one hundred shares of common stock of the United States Steel Corporation, represented by certificates Nos. H-394943/50 inclusive and H-402081/2 inclusive for ten shares each, registered in the name of Marks, Bulteel, Mills & Company, and that certificates of said stock were then held by Plaintiff at Plaintiff's branch at London, England.

5. That during said war, the Public Trustee of England, pursuant to the laws of England, did take and hold and now continues to hold, said certificates.

6. That since said outbreak of war, Plaintiff has done nothing to diminish its ownership of said shares and is now the owner of all said shares.

7. That none of said shares or certificates have been demanded or seized by the Alien Property Custodian of the United States.

[fol. 3] 8. That now Plaintiff cannot exercise its full rights of ownership in said shares because of the said taking and holding of said certificates; that on Plaintiff's demand said Trustee refused to surrender said certificates and said Steel Corporation refused to pay Plaintiff dividends upon said shares or to transfer said stock at Plaintiff's direction while said certificates were outstanding as aforesaid; that Plaintiff therefore suffers irreparable damage against which it has no adequate remedy or relief at law and is ready and willing and hereby offers to do whatever equity requires in the premises;

Wherefore plaintiff prays:

(a) That Plaintiff may be adjudged and decreed by this Court sole and lawful owner of all said shares;

(b) That said United States Steel Corporation be ordered by judgment and decree of this Court to refuse transfer to any said shares or certificates thereof upon application by said Public Trustee of England or his agent;

(c) That said United States Steel Corporation be ordered by judgment and decree of this Court to enter Plaintiff as owner of said shares upon its books and records, and do, under such terms and conditions as this Court may impose, cancel the outstanding said certificates upon its books and issue new certificates in their place and stead to Plaintiff, and do pay to Plaintiff all unpaid dividends declared and payable on said shares to date of such decree;

(d) That Plaintiff may have such further or other general relief in the premises as the nature and circumstances of this case may require and shall to this Honorable Court seem meet and that the United States Steel Corporation, Public Trustee, Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, co-partners, trading as Marks, Bulteel, Mills & Co., defendants, be compelled to answer all and singular the premises in this Bill

(but not under oath, answer under oath hereby waived), and that [fol. 4] the Court grant Plaintiff due process by subpoena directed to said defendants, requiring and commanding each of them to appear herein to answer this, the Plaintiff's Bill, and to stand to, perform and abide such decree as to this Honorable Court will seem meet.

Albert M. Austin. Albert M. Austin, Solicitor for Plaintiff.

Office and post office address, 120 Broadway, New York City, N. Y.

[fol. 5] IN UNITED STATES DISTRICT COURT

Equity. No. E-28-340

[Title omitted]

NOTICE OF APPEARANCE OF DEFENDANT UNITED STATES STEEL CORPORATION

To the Clerk of the District Court of the United States in and for the Southern District of New York:

Please enter the appearance herein of United States Steel Corporation, a corporation created and existing under the laws of the State of New Jersey, United States of America, and the appearance of the undersigned, as Solicitor for said defendant.

This appearance is without prejudice to the objections of said defendant, United States Steel Corporation, that by reason of the provisions of the Treaty of Versailles, and the Treaty of Berlin, and the laws of the United States, Great Britain and Germany, this Honorable Court is without jurisdiction to entertain this suit and that this suit is not maintainable against the defendants or any of [fol. 6] them. Said objections are hereby expressly reserved and are not waived by this appearance by which said defendant waives only (1) the lack of service of process upon it, and (2) the bringing of this suit in a district court of the United States other than the district of which said defendant is a resident.

Dated New York, April 3rd, 1924.

Yours, etc.,

Kenneth B. Halstead, Solicitor for Defendant United States Steel Corporation.

Office and Post Office Address, No. 71 Broadway, Borough of Manhattan, New York, N. Y.

[fol. 7] IN UNITED STATES DISTRICT COURT

Equity. No. E-28-340.

[Title omitted]

NOTICE OF APPEARANCE OF DEFENDANT PUBLIC TRUSTEE

To the Clerk of the District Court of the United States in and for the Southern District of New York:

Please enter the appearance herein of the defendant, Public Trustee, a corporation sole, created by and existing under the Laws of the United Kingdom of Great Britain and Ireland, a public office of said Kingdom, sued herein as "O. R. A. Simpkin, as Public Trustee of England," and the appearance of the undersigned as solicitors for said defendant.

This appearance is without prejudice to the objections of said defendant, Public Trustee, that by reason of the provisions of the Treaty of Versailles and the Treaty of Berlin, and the Laws of the United States, Great Britain and Germany, this Honorable Court is without jurisdiction to entertain this suit and that this suit is not maintainable against the defendants or any of them. Said objections are hereby expressly reserved and are not waived by this appearance by which said defendant waives only the lack of service of [fol. 8] process upon him and his immunity from suit as an officer of a foreign sovereign government in his official capacity.

Dated March 31st, 1924.

Yours, &c., Coudert Brothers, Solicitors for the Defendant Public Trustee.

Office & Post Office Address, No. 2 Rector Street, Borough of Manhattan, New York City.

[fol. 9] IN UNITED STATES DISTRICT COURT

Equity. No. E-28-340

[Title omitted]

NOTICE OF APPEARANCE OF DEFENDANTS EGREMONT JOHN MILLS
ET AL.

To the Clerk of the District Court of the United States in and for the Southern District of New York:

Please enter the appearance herein of the defendants, Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, copartners trading as Marks, Bulteel, Mills & Co., and the appearance of the undersigned as solicitors for said defendants.

This appearance is without prejudice to the objections of said

defendants, Egroment John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, that by reason of the provisions of the Treaty of Versailles and the Treaty of Berlin, and the Laws of the United States, Great Britain and Germany, this Honorable Court is without jurisdiction to entertain this suit and that this suit is not maintainable against the defendants or any of them. Said objections are hereby expressly reserved and are not waived by this appearance by which said defendants waive only the lack of per-[fol. 10] sonal service of process upon them.

Dated March 31, 1924.

Yours, &c., Coudert Brothers, Solicitors for the Defendants
Egroment John Mills, Walter Clarke, Morris Nathaniel Julius, and Donnell Shepard Post.

Office & Post Office Address, No. 2 Rector Street Borough of Manhattan, New York City.

[fol. 11] IN UNITED STATES DISTRICT COURT

Equity. No. E-28-340

[Title omitted]

ANSWER OF DEFENDANT UNITED STATES STEEL CORPORATION

The defendant United States Steel Corporation (sometimes herein-after referred to as the "Steel Corporation"), by Kenneth B. Halstead, its Solicitor, answering the amended Bill of Complaint of the plaintiff herein:

1. a. Admits the allegations contained in paragraphs of said bill of complaint numbered "1," "2" and "7."

b. States that this defendant Steel Corporation is without knowledge as to whether the plaintiff has title to the shares of stock mentioned in paragraph of said bill of complaint numbered "3" and as [fol. 11½] to whether a cloud on plaintiff's alleged title has been created. States that it is without knowledge as to whether the Treaty of Berlin, in so far as it is relied upon by the defendant Public Trustee to defeat plaintiff's title to the shares of stock mentioned in paragraph of said bill of complaint numbered "3," would deprive plaintiff of its property without due process of law in violation of Amendment Fifth of the Constitution of the United States. Except as herein stated, admits the allegations contained in said paragraph "3".

c. Admits the allegations contained in paragraphs "4" and "5" of said bill of complaint, subject to the explanations hereinafter set forth in paragraphs "4" to "12," inclusive.

2. States that this defendant Steel Corporation is without knowledge as to whether the plaintiff is now the owner of all or any of the shares of stock referred to in paragraph numbered "6" of said bill of complaint. Admits that since the outbreak of the war be-

tween Great Britain and Germany in 1914, plaintiff has done nothing to diminish its ownership of said shares, excepting in so far as the plaintiff's ownership may have been transferred to or become [fol. 12] vested in the defendant, Public Trustee, and excepting in so far as the United States of America may have acquired some right, title or interest in said shares by reason of the facts hereinafter set forth.

3. States that this defendant Steel Corporation is without knowledge as to whether the plaintiff has any rights or ownership in said shares or has suffered any damage in respect thereto, or can exercise any rights of ownership therein. Admits the taking and holding by the defendant, Public Trustee, of the certificates referred to in paragraph "8" of said bill of complaint, and said Trustee's refusal to surrender said certificates on plaintiff's demand and this defendant Steel Corporation's refusal to pay dividends upon said shares or to transfer said stock at the plaintiff's direction while said certificates are outstanding.

4. Alleges that until on or about the 16th day of May, 1923, this defendant Steel Corporation had received no notice of any claim of ownership or other interest in said shares of stock by either the plaintiff or the defendant, Public Trustee, or any other person or corporation whatsoever, excepting only the apparent ownership of the defendants, Marks, Bulteel, Mills & Co., which apparent ownership was evidenced by the fact that said defendants, Marks, Bulteel, Mills & Co., were the stockholders of record of said shares of stock and registered as such on the books of this defendant Steel Corporation, and by the further fact that said certificates representing said shares were outstanding in the name of said defendants, Marks, Bulteel, Mills & Co.

5. Alleges that since the time when said defendants, Marks, Bulteel, Mills & Co., became the stockholders of record of said shares [fol. 13] of stock and until on or about said 16th day of May, 1923, this defendant Steel Corporation paid all dividends accruing on said shares of stock to said defendants, Marks, Bulteel, Mills & Co., or in accordance with their written order, and otherwise recognized said last mentioned defendants as owners of said shares of stock; all of which was in accordance with this defendant's Steel Corporation's rights and duties under its Certificate of Incorporation, its By-laws and the common and statute law of the State of New Jersey.

6. Alleges that on or about said 16th day of May, 1923, the plaintiff, or other persons in its behalf, gave notice to this defendant Steel Corporation to the general effect that the plaintiff was the owner of said shares of stock and entitled to the dividends thereon, notwithstanding the fact that the certificates representing the same had been seized by and were in the possession of the defendant, Public Trustee, acting under the laws of the Kingdom of Great Britain and Ireland, and that any transfer of said shares of stock without the plaintiff's assent, or the payment of any dividends thereon to

the defendants, Marks Bulteel, Mills & Co., the defendant, Public Trustee, or to any other person or corporation without the plaintiff's assent, would be in contravention of the plaintiff's rights under the laws of the State of New Jersey, and under the laws and Constitution of the United States of America,—particularly Article V of the Amendments to the Constitution of the United States—in that any recognition of the rights of ownership asserted by the defendant, Public Trustee, under and by virtue of the laws of the Kingdom of Great Britain and Ireland would be depriving the plaintiff of its [fol. 14] property without due process of law; and to the further general effect that any such action by this defendant Steel Corporation would render this defendant Steel Corporation liable in damages to the plaintiff.

7. Alleges that thereafter claim was made by or on behalf of the defendant, Public Trustee, to the general effect that the defendant, Public Trustee, was the owner of said shares of stock and of the certificates representing the same on the ground, among others, (1) that by virtue of the seizure of said certificates in the Kingdom of Great Britain and Ireland, and pursuant to the laws thereof, title to said shares of stock and said certificates representing the same had vested in the defendant, Public Trustee, and (2) that by virtue of the Treaty of Versailles and the Treaty of Berlin, title to said shares of stock and said certificates representing the same had vested in the defendant, Public Trustee.

8. Alleges that thereupon this defendant Steel Corporation, being at all times after notice of such conflicting claims, a disinterested stakeholder as between said conflicting claimants, to wit, the plaintiff, the defendant, Public Trustee, and the defendants, Marks, Bulteel, Mills & Co., advised said claimants to the effect that it would decline to recognize the alleged ownership of any of said claimants or to pay dividends to any of said claimants until the respective rights, title and interest in and to the said shares of stock, the said certificates representing the same, and the said dividends should be established or judicially determined by a court of competent jurisdiction.

9. Alleges that the State of New Jersey, being the State under whose laws this defendant Steel Corporation was organized and now [fol. 15] exists, heretofore duly enacted the following laws:

A. Sections 1, 7, 8, 11, 19, 20, 44, 111, 112 and 113 of Chapter 185, Laws of 1896, entitled "An Act concerning corporations (Revision of 1896)," certain of said sections having been subsequently amended as follows:

Section 7 by Pamphlet Laws, 1905, page 515;

Section 8 by Section 2 of Pamphlet Laws, 1898, page 407;

Section 19 by Pamphlet Laws, 1911, page 79.

B. Sections 1 and 7 of an act entitled "An Act for the relief of creditors against absent, fraudulent and absconding debtors (Revision of 1901)," Pamphlet Laws, 1901, pages 158 and 160.

C. Sections 4, 5, 6 and 7 of an act entitled "An Act respecting executions," Revision 1877, pages 389 and 390.

D. An act entitled "An Act to make uniform the law of transfer of shares of stock in corporations." Chapter 191, Laws of 1916, approved March 18, 1916.

And this defendant Steel Corporation begs leave to refer to said statutes with the same force and effect as if herein set forth in full, and to put in evidence upon the trial of this action copies thereof or of parts thereof.

10. Alleges that under the common and statute law of the State of New Jersey the situs of the shares of stock of this defendant Steel Corporation is within the State of New Jersey, for some purposes at least, and begs leave to put in evidence upon the trial of this action any and all pertinent decisions and opinions of the courts of the State of New Jersey.

11. Alleges that in and by the Amended Certificate of Incorporation of this defendant Steel Corporation duly filed and recorded in the office of the Secretary of State of the State of New Jersey, on or [fol. 16] about April 1, 1901, it is, among other things, provided as follows:

"The business or purpose of the Company is from time to time to do any one or more of the acts and things herein set forth; and it may conduct its business in other States and in the Territories and in foreign countries, and may have one office or more than one office, and keep the books of the Company outside of the State of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage and convey real and personal property either in or out of the State of New Jersey."

"Subject always to by-laws made by the Stockholders, the Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the Stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting."

12. Alleges that By-laws were duly adopted by this defendant Steel Corporation in or about the month of April, 1901, wherein are contained, among other provisions, the following:

"Article V.—Capital Stock—Seal

Section 1. Certificates of Shares.—The certificates for shares of the capital stock of the Company shall be in such form, not inconsistent with the certificate of incorporation, as shall be prepared or be approved by the Board of Directors. The certificates shall be signed by the president or a vice-president, and also by the treasurer or an assistant treasurer.

All certificates shall be consecutively numbered. The name of the person owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the Company's books.

No certificate shall be valid unless it is signed by the president or a vice-president, and by the treasurer or an assistant treasurer.

All certificates surrendered to the Company shall be canceled, and no new certificate shall be issued until the former certificate for the same number of shares of the same class shall have been surrendered and canceled.

Section 2. Transfer of Shares.—Shares in the capital stock of the Company shall be transferred only on the books of the Company by the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares.

Section 3. Regulations.—The Board of Directors, and the Finance Committee also, shall have power and authority to make all such [fol. 17] rules and regulations as respectively they may deem expedient, concerning the issue, transfer and registration of certificates for shares of the capital stock of the Company."

"Article VI.—Amendments

Section 1. The Board of Directors shall have power to make, amend and repeal the By-laws of the Company, by a vote of a majority of all of the directors, at any regular or special meeting of the Board, provided that notice of intention to make, amend or repeal the By-laws in whole or in part shall have been given at the next preceding meeting; or without any such notice, by a vote of two-thirds of all the directors."

And that the above quoted provisions of said By-laws have not been amended or repealed since the original adoption thereof, and at all times since April, 1901, have been in full force and effect.

As a first separate and distinct defense:

13. Alleges that a Treaty of Peace between the United States of America and Germany restoring friendly relations (hereinafter referred to as the Treaty of Berlin) was signed at Berlin on August 25, 1921; that ratification thereof was advised by the Senate of the United States on October 18, 1921; that said Treaty was ratified by the President of the United States on October 21, 1921, and was ratified by Germany on November 2, 1921; that ratifications were exchanged between the two governments at Berlin on November 11, 1921; that said Treaty was proclaimed by the President of the United States on November 14, 1921, and that thereupon, and pursuant to Article VI of the Constitution of the United States, said Treaty of Berlin became the supreme law of the land.

14. Alleges that the Treaty of Versailles was concluded on June 28, 1919, and that pursuant to Article I of the Treaty of Berlin, Germany undertook to accord to the United States and agreed that

the United States should have and enjoy all the rights and advantages [fol. 18] stipulated for the benefit of the United States in the Treaty of Versailles, and that pursuant to Article II of said Treaty of Berlin, it was understood between the said parties that the rights and advantages stipulated in the Treaty of Versailles for the benefit of the United States which it was intended the United States should have and enjoy were those defined in certain sections and parts, including Articles 297 and 298 of Section IV of Part X.

15. Alleges that under subdivision (b) of Article 297, and under subdivision 9 of the Annex to Article 298, above mentioned, it is provided as follows:

“(b) Subject to any contrary stipulations which may be provided for in the present Treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights and interests belonging at the date of the coming into force of the present Treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates, including territories ceded to them by the present Treaty.

The liquidation shall be carried out in accordance with the laws of the Allied or Associated State concerned, and the German owner shall not be able to dispose of such property, rights or interests nor to subject them to any charge without the consent of that State.

German nationals who acquire ipso facto the nationality of an Allied or Associated Power in accordance with the provisions of the present Treaty will not be considered as German nationals within the meaning of this paragraph.”

“Until completion of the liquidation provided for by Article 297, paragraph (b), the property, rights and interests of German nationals will continue to be subject to exceptional war measures that have been or will be taken with regard to them.”

16. Alleges that neither the President of the United States, the Alien Property Custodian, nor any other person thereunto authorized by the terms of the Trading with the Enemy Act, has required or demanded the transfer to the Alien Property Custodian of the shares of stock mentioned in the bill of complaint, and that by reason of the termination of the war between the United States and Germany on July 2, 1921, pursuant to the above mentioned proclamation [fol. 19] of the President of the United States, no valid requirement or demand for the transfer of said shares of stock can be issued under the now existing provisions of said Trading with the Enemy Act.

17. Alleges that, by virtue of the provisions set forth in paragraph 15 hereof, the United States of America has or may claim to have some right, title or interest in, or lien upon, said shares of stock and said certificates; that by reason thereof the United States is an indispensable or proper party herein; and that therefore either (1) if the United States is an indispensable party herein, this Court has no jurisdiction of this suit, and (2) if the United States is a

proper but not an indispensable party herein, this Court is required, pursuant to Rule XXXIX of the Rules of Practice for the Courts of Equity for the United States, which were promulgated by the Supreme Court of the United States on November 12, 1912, to make its decree herein without prejudice to the rights of the United States of America.

As a second separate and distinct defense:

18. Alleges that in and by the terms and provisions of subdivision 2 of the Annex to Article 297 of Section IV of Part X of the said Treaty of Versailles, it is provided as follows:

"No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of such a Power by Germany or by any German national wherever resident in respect of any act or omission with regard to his property, rights or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power."

19. Alleges that, by reason of the provisions set forth in the paragraph next preceding, the plaintiff, being a German national, is or may be precluded from bringing this action or making any other [fol. 20] claim or bringing any other action against this defendant Steel Corporation and/or the other defendants herein in any wise affecting the plaintiff's alleged ownership of the shares of stock and the certificates representing the same, which are referred to in the said bill of complaint, and that therefore this Court is or may be without jurisdiction to entertain this suit, and that this suit is not or may not be maintainable against the defendants, or any of them.

Wherefore, this defendant Steel Corporation prays either (1) that the bill of complaint herein be dismissed; or (2) that this Court determine the respective rights, title and interest of the parties to this suit in and to said stock, and the said certificates representing the same, and the accrued dividends heretofore unpaid thereon,—including the rights asserted by the plaintiff under Article V of the Amendments to the Constitution of the United States, and the rights asserted by the defendant, Public Trustee, under the Treaty of Berlin, and (3) that no decree shall be entered herein requiring this defendant Steel Corporation to recognize any party as the owner of said stock, or the right of any party to compel this defendant Steel Corporation to transfer the same upon its books, except upon the surrender to this defendant Steel Corporation of said certificates duly endorsed for purposes of such transfer by the defendants, Marks, Bulteel, Mills & Co., or except upon requiring such party to furnish to this defendant Steel Corporation a bond of indemnity in such form, in such amount and with such sureties as

shall be approved by this Court to protect this defendant Steel Corporation from all loss, cost and damage which it may at any time suffer by reason of the said certificates remaining outstanding; and (4) that if this Court shall make its decree without prejudice to the [fol. 21] rights of the United States of America in and to the said shares of stock, such decree may further provide that this defendant Steel Corporation, in issuing certificates representing the said shares of stock, may make an appropriate notation thereon indicating that the said shares of stock are subject to the rights of the United States of America.

Dated, New York, April 19th, 1924.

United States Steel Corporation, by Geo. K. Leet, Secretary.

Kenneth B. Halstead, Solicitor for and of Counsel to Defendant United States Steel Corporation. Wm. Averell Brown, of Counsel.

Office and Post Office Address, No. 71 Broadway, Borough of Manhattan, New York, N. Y.

[fol. 22]

IN UNITED STATES DISTRICT COURT

Equity. No. 28-340

[Title omitted]

ANSWER OF DEFENDANT PUBLIC TRUSTEE

The defendant, Public Trustee, a corporation sole, created and existing under and by virtue of the Laws of the United Kingdom of Great Britain and Ireland, a public office of said Kingdom, by Coudert Brothers, his solicitors, answers the amended bill of complaint of the above named plaintiff herein as follows:

1. Admits the allegations contained in paragraphs numbered "1," "2," "4," "5" and "7" of the said amended bill of complaint.

2. Admits and alleges that this suit arises between citizens and subjects of foreign states and a citizen of a state of the United States, and that the value in controversy to the plaintiff herein exceeds the sum of \$3,000.00 exclusive of interest and costs; and that this suit arises under and involves the construction of a Treaty of the United States; and that the defendant, Public Trustee, insists that he has title to the shares herein involved by reason, among other things, of the Treaty of Berlin and the Laws of the United States and alleges and avers that he has such title; admits that this suit arises under the Constitution of the United States; alleges and avers that said Treaty of Berlin defeats plaintiff's title to said shares; denies that plaintiff has any title to said shares; denies that plaintiff has been or is deprived of any property herein involved without due process of law; and denies each and every allegation contained in paragraph num-

bered "3" of said amended bill of complaint not hereinbefore specifically admitted or denied.

[fol. 23] 3. Denies the allegation, contained in paragraph numbered "6" of the said amended bill of complaint, that the plaintiff is now the owner of all or any of the shares in said paragraph mentioned. Alleges that under and pursuant to the laws of the United Kingdom of Great Britain and Ireland, of Germany, and of the United States plaintiff has heretofore divested itself and been divested of ownership in and to the said certificates and shares and that such ownership has been duly vested in the defendant, Public Trustee, as Custodian of Enemy Property, on behalf of the United Kingdom of Great Britain and Ireland. Admits that since the outbreak of said war plaintiff has done nothing to diminish its ownership of said shares except as in this Answer set forth.

3. a. Denies the allegation contained in paragraph numbered "8" of the said amended bill of complaint that the plaintiff has any rights of ownership in the said shares or has suffered any damage in respect thereto. Alleges that the plaintiff cannot exercise any rights of ownership in said shares because of the divesting of its ownership in and to the same and the vesting of such ownership in this defendant. Except as thus denied admits the allegations contained in paragraph numbered "8" of the said amended bill of complaint.

Further answering said amended bill of complaint the defendant Public Trustee further alleges as follows:

4. The defendant, Public Trustee, as such has been since on or before the 27th day of November, 1914, and now is duly qualified and acting as Custodian of Enemy Property under and pursuant to certain acts of the Parliament of the United Kingdom of Great Britain and Ireland, known as the Trading with the Enemy Acts, 1914 to 1918.

5. It is, and at the time of the seizure hereinafter mentioned was, the law of said United Kingdom of Great Britain and Ireland that all property belonging to alien enemies was subject to be seized by the defendant, Public Trustee, and to be vested in him by orders to that effect made by the Board of Trade, a Department of the Government of said Kingdom or by the High Court of Justice. That upon such vesting the defendant, Public Trustee, became and was entitled to the ownership and possession of such property and the right to transfer the same.

[fol. 24] 6. The certificates representing the one hundred shares of the common capital stock of the defendant, United States Steel Corporation, numbered H-394943 to 50 inclusive and H-402081 and 82 inclusive mentioned and described in paragraph numbered "4" of said bill of complaint, were at the outbreak of said war and at all times thereafter and now are physically located in the United Kingdom of Great Britain and Ireland, at London, England, therein, and were at all said times duly endorsed in blank by the defendants, the

members of said firm of Marks, Bulteel, Mills & Co. Said certificates and the shares represented thereby, and every right, title and interest of the plaintiff in them and either of them, at all said times to and including the time of the seizure hereinafter mentioned, constituted property in the said Kingdom under and by virtue of the laws thereof. The plaintiff, Direction der Disconto-Gesellschaft, was at all times after the outbreak of said war, at the time of the seizure hereinafter mentioned, and until the conclusion of peace between said Kingdom and Germany an alien enemy of the said Kingdom.

7. Said certificates and the shares represented thereby, and all of the right, title and interest of the plaintiff in them and either of them, were duly seized, captured and taken over by the defendant, Public Trustee, acting as Custodian of Enemy Property as aforesaid, on or prior to the 27th day of March, 1918, and were duly vested in said Public Trustee by a vesting order duly made by the said Board of Trade, a Department of the British Government, upon its behalf, on or about said 27th day of March 1918.

8. By virtue of such seizure, capture and taking over and the entry of said vesting order, and the laws of said United Kingdom of Great Britain and Ireland, the said defendant, Public Trustee, became vested with the ownership of said certificates and the shares represented thereby and of every right, title and interest of the plaintiff [fol. 25] therein or in either of them, and entitled to dispose of the same. Under and pursuant to the laws of the said Kingdom the said vesting order had the same effect as though the said certificates and shares, and every right, title and interest of plaintiff in them or in either of them, had been then and there duly and voluntarily transferred, conveyed and delivered to the said defendant, Public Trustee, by the said plaintiff, Direction der Disconto Gesellschaft.

9. On or about the 28th day of June, 1919, said United Kingdom of Great Britain and Ireland, and the States Allied and Associated with it in the said war against Germany on the one hand, and Germany on the other, by their duly authorized agents and representatives respectfully, entered into and signed and International Treaty of Peace known as the "Treaty of Versailles."

10. Thereafter and prior to the 10th day of January, 1920, the said Treaty of Versailles was duly ratified by the Government of the United Kingdom of Great Britain and Ireland and by the Government of Germany and upon the said 10th day of January, 1920 ratifications of said Treaty were duly exchanged by said Governments and the said Treaty by its terms became effective between them.

11. Subsequent to the negotiation and signature of the said Treaty of Versailles, and both prior and subsequent to the exchange of ratifications thereof as aforesaid, the Parliament of the United Kingdom of Great Britain and Ireland duly enacted certain statutes known as the "Treaty of Peace Acts," and the King of said Kingdom duly issued pursuant to such acts certain Orders in Council

known as the "Treaty of Peace Orders." The effect of the said statutes and orders under and by virtue of the Laws of the said Kingdom was to, and they did, give to the said Treaty of Versailles and in particular sections "III," "IV," "V," "VI," and "VII" of Part X [fol. 26] thereof, full force and effect as law of said Kingdom as of the date of the taking effect of the said Treaty as aforesaid.

12. The said Treaty of Versailles was duly published and promulgated by Germany and issued in the collection of Imperial Statutes thereof, and subsequent to the negotiation and signature of the said Treaty and both prior and subsequent to the exchange of ratifications thereof as aforesaid, there were duly enacted in Germany certain national statutes relating thereto. The effect of the publication, promulgation and issuance of the said Treaty as aforesaid and of the enactment of the said statutes under and by virtue of the Laws of Germany was to, and they did, give effect to the said Treaty of Versailles as a German Imperial or National Statute.

13. In and by the terms and provisions of the said Treaty of Versailles, and in particular Part X thereof, the laws of both the United Kingdom of Great Britain and Ireland and of Germany, it was and is provided that as between the said Kingdom or its nationals on the one hand and Germany or its nationals on the other hand, all the exceptional war measures, or measures of transfer, or acts done in execution of such measures by said Kingdom shall be and they are considered as final and binding. Said exceptional war measures, measures of transfer and acts done in execution of such measures as provided in the said Treaty and laws include all legislative, administrative or judicial measures of said Kingdom which were taken and which had as an object the seizure of enemy assets in whatsoever form or in whatsoever place, as well as all measures of said Kingdom directing the devolution of ownership in enemy property upon a person other than enemy owner without his consent, or the cancelling of titles or securities, together with all acts of said Kingdom done in execution of any of such measures, including all orders of Government Departments or Courts applying such [fol. 27] measures to enemy property. Said exceptional war measures, measures of transfer and acts done in execution of such measures include the order, measures and acts wherein and whereby the devolution of the title of plaintiff in and to the certificates and shares set forth in the bill of complaint herein, upon the defendant, Public Trustee, as Custodian of Enemy Property on behalf of said Kingdom, were effected or directed.

In and by the terms and provisions of the said Treaty and laws it was and is further provided that the validity of vesting orders and of any other orders of any Department of the Government or Court of said Kingdom, made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests including the vesting order of March 27, 1918 hereinbefore mentioned, was and is confirmed; that the interests of all persons, including every right, title and interest of the plaintiff in and to the certificates and shares set forth in the

bill of complaint herein, shall be and they are regarded as having been effectively dealt with by any order dealing with property in which they might be interested; that no question should or shall be raised as to the regularity of the transfer of any property rights or interests dealt with in pursuance of any such order including the said order dated March 27, 1918 as aforesaid, and that every action taken with regard to any property as regards any matter whatsoever in pursuance of orders of any Department of the Government or Court of said Kingdom made or given, or purporting to be made or given, in pursuance of war legislation thereof with regard to enemy property, rights, or interests, including the said vesting order dated March 27, 1918 above mentioned, was and is confirmed.

14. In and by the terms and provisions of the said Treaty of Versailles and in particular Part X thereof, and of the legislation [fol. 28] of Germany passed pursuant thereto and for the purpose of giving effect to same, and of the Laws of Germany, the Government of Germany duly took over and acquired property of its nationals as therein specified, including every right, title and interest of the plaintiff in and to the certificates and shares set forth in the bill of complaint herein, and duly transferred the said property to the defendant, Public Trustee, as Custodian of Enemy Property on behalf of the United Kingdom of Great Britain and Ireland, to be applied and the proceeds thereof to be credited to Germany by said Kingdom as therein provided, in payment on account of the obligations of Germany and its nationals to the said Kingdom and its nationals arising out of the said war and otherwise, and Germany duly agreed to compensate its nationals for said property.

15. Certificates of stock in American Corporations other than those described in the bill of complaint herein and which were similarly seized by the Public Trustee have been sold by him. The proceeds of some such sales have been already credited to and accepted by Germany under the provisions of the Treaty of Versailles. In some instances Germany has made payment to its nationals whose certificates of stock in United States Corporations were so seized and sold by the Public Trustee and the proceeds credited to Germany.

16. In and by the terms and provisions of the said Treaty of Versailles and of subdivision 2 of the annex to article 297 in Section IV of Part X thereof, it was provided as follows:

"No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of, or under the direction of any legal authority or Department of the Government of such a Power by Germany or by any German National wherever resident in respect of any act or omission with regard to his property, rights or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures laws or regulations of any Allied or Associated Power."

[fol. 29] 17. All of the right, title and interest of the plaintiff in and to the said certificates and the shares represented thereby were duly divested and the same were vested in the defendant, Public Trustee, as Custodian of Enemy Property on behalf of the United Kingdom of Great Britain and Ireland, and every act or omission complained of by the plaintiff in its bill of complaint herein was done, pursuant to and in accordance with the exceptional war measures, laws and regulations of the said Kingdom.

18. On or about the 25th day of August, 1921, the Governments of the United States and Germany duly entered into and signed at Berlin an International Treaty of Peace known as the "Treaty of Berlin." Ratifications of said Treaty were duly exchanged by the said Governments at Berlin on or about the 11th day of November 1921 and the said Treaty then and there took effect in accordance with its terms.

19. Thereafter and on or about November 14, 1921 the said Treaty was duly proclaimed by the President of the United States and the same thereupon became and it now is a part of the law of the United States.

20. The said Treaty of Berlin was duly published and promulgated by Germany and issued in the collection of Imperial Statutes thereof, and subsequent to the negotiations and signature of the said Treaty and both prior and subsequent to the exchange of ratifications thereof as aforesaid, there were duly enacted in Germany certain national statutes relating thereto. The effect of the publication, promulgation and issuance of the said Treaty as aforesaid and of the enactment of the said statutes under and by virtue of the Laws of Germany was to, and they did, give effect to the said Treaty of Berlin as a German Imperial or National Statute.

21. In and by the terms and provisions of the said Treaty of [fol. 30] Berlin and the laws of the United States of America, it was and is provided that no claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of said Power by Germany or by any German National wherever resident in respect of any act or omission with regard to this property rights or interests during the said war or in preparation for said war, and that similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power.

22. The plaintiff herein was at all the times mentioned in the said Treaty of Berlin and now is a German National resident in Germany and this action is one brought by said German National against an Allied or Associated Power and nationals thereof within the prohibition of the said Treaty and the Laws of the United States.

23. Under and by virtue of the terms and provisions of the said Treaty of Berlin and of the Law of the United States and of the law

of Nations, the terms and provisions of the said Treaty of Versailles creating rights and advantages in the property of German Nationals for the benefit of the United Kingdom of Great Britain and Ireland, have become and they now are a part of the law of the United States of America.

24. Among the rights in property of German Nationals so created in said Treaty of Versailles for the benefit of the said United Kingdom of Great Britain and Ireland, is the right of ownership of the certificates and shares of stock which are the subject of this suit and of every right, title and interest therein, which ownership was established and vested thereby in the defendant, Public Trustee.

25. At all times since the seizure, capture and taking over of the [fol. 31] said certificates and shares and the making of the said vesting order of March 27, 1918, and since the effective date of the said Treaties of Versailles and Berlin and of the laws of the said United Kingdom of Great Britain and Ireland and of Germany and of the United States as hereinbefore set forth, the said certificates set forth in the bill of complaint herein and the shares represented thereby and every right, title and interest in them or either of them, have belonged and now belong, under and by virtue of the Laws of the said United Kingdom of Great Britain and Ireland, of Germany and of the United States, to the said United Kingdom of Great Britain and Ireland, and have been at all of such times and they now are subject to the disposal thereof through the agency of the defendant, Public Trustee, acting as Custodian of Enemy Property as aforesaid, and this plaintiff has been since all of said dates and it now is without any right, title or interest in or to the said certificates or the shares represented thereby and without right to institute or prosecute this suit, and this Honorable Court has been at all times since the proclamation of the said Treaty of Berlin as hereinbefore set forth and it now is, by reason thereof, without jurisdiction of the subject matter of this suit or of the parties hereto.

Wherefore the defendant, Public Trustee, prays that the bill of complaint herein be dismissed, that this Court determine, adjudge and decree that said defendant, Public Trustee, acting as Custodian of Enemy Property as aforesaid, is the owner of the property which is the subject of this suit and is entitled to the possession thereof and that said defendant, Public Trustee, have such other or further de- [fol. 32] cree or relief in the premises as may be just and equitable.

Coudert Brothers, Solicitors for Defendant Public Trustee.

Frederic R. Coudert, Howard Thayer Kingsbury, Mahlon B. Doing, of Counsel.

Office & Post Office Address: #2 Rector Street, Borough of Manhattan, City of New York.

[fol. 33]

IN UNITED STATES DISTRICT COURT

Equity. No. 28-340

[Title omitted]

ANSWER OF DEFENDANTS EGREMONT JOHN MILLS ET AL.

The defendants, Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, Co-partners trading as Marks, Bulteel, Mills & Co., by Coudert Brothers, their solicitors, answer the amended bill of complaint of the above named plaintiff herein as follows:

1. Admit the allegations contained in paragraphs numbered "1," "2," "4," "5" and "7" of the said amended bill of complaint.

2. Admit and allege that this suit arises between citizens and subjects of foreign states and a citizen of a state of the United States, and [fol. 34] that the value in controversy to the plaintiff herein exceeds the sum of \$3,000.00 exclusive of interest and costs; and that this suit arises under and involves the construction of a Treaty of the United States; and that the defendant, Public Trustee, insists that the has title to the shares herein involved by reason, among other things, of the Treaty of Berlin and the Laws of the United States and allege and aver that he has such title; admit that this suit arises under the Constitution of the United States; allege and aver that said Treaty of Berlin defeats plaintiff's title to said shares; deny that plaintiff has any title to said shares; deny that plaintiff has been or is deprived of any property herein involved without due process of law; and deny each and every allegation contained in paragraph numbered "3" of said amended bill of complaint not hereinbefore specifically admitted or denied.

3. Deny the allegations, contained in paragraph numbered "6" of the said amended bill of complaint, that the plaintiff is now the owner of all or any of the shares in said paragraph mentioned. Allege that under and pursuant to the laws of the United Kingdom of Great Britain and Ireland, of Germany, and of the United States, plaintiff has heretofore divested itself and been divested of ownership in and to the said certificates and shares and that such ownership has been duly vested in the defendant, Public Trustee, as Custodian of Enemy Property, on behalf of the United Kingdom of Great Britain and Ireland. Admit that since the outbreak of said War plaintiff has done nothing to diminish its ownership of said shares except as in this Answer set forth.

3. a. Deny the allegation, contained in paragraph numbered "8" [fol. 35] of the said amended bill of complaint, that the plaintiff has any rights of ownership in the said shares or has suffered any damage in respect thereto. Allege that the plaintiff cannot exercise any rights of ownership in said shares because of the divesting of its ownership in and to the same and the vesting of such ownership in the

defendant, Public Trustee. Except as thus denied admit the allegations contained in paragraph numbered "8" of the said amended bill of complaint.

Further answering said amended bill of complaint, these defendants further allege as follows:

4. These defendants, Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, Co-partners trading as Marks, Bulteel, Mills & Co., prior to the outbreak of said war had endorsed in blank and delivered the certificates mentioned and described in paragraph numbered "4" of the bill of complaint herein, and these defendants have had at all times since the seizure hereinafter mentioned and now have no right, title or interest in or to the said certificates or the shares represented thereby.

5. The defendant, Public Trustee, as such, has been since on or before the 27th day of November, 1914, and now is, duly qualified and acting as Custodian of Enemy Property under and pursuant to certain acts of the Parliament of the United Kingdom of Great Britain and Ireland, known as the Trading with the Enemy Acts, 1914 to 1918.

6. It is, and at the time of the seizure hereinafter mentioned was, the law of said United Kingdom of Great Britain and Ireland that all property belonging to alien enemies was subject to be seized by the defendant, Public Trustee, and to be vested in him by orders to that effect made by the Board of Trade, a Department of the Government of said Kingdom, or by the High Court of Justice. That upon such vesting the defendant, Public Trustee, became and was entitled to the [fol. 36] ownership and possession of such property and the right to transfer the same.

7. The certificates representing the one hundred shares of the common capital stock of the defendant, United States Steel Corporation, numbered H-394943 to 50 inclusive and H-402081 and 82 inclusive mentioned and described in paragraph numbered "4" of said bill of complaint, were at the outbreak of said war and at all times thereafter and now are physically located in the United Kingdom of Great Britain and Ireland, at London, England, therein, and were at all said times duly endorsed in blank by these defendants, the members of said firm of Marks, Bulteel, Mills & Co. Said certificates and the shares represented thereby, and every right, title and interest of the plaintiff in them and either of them, at all said times to and including the time of the seizure hereinafter mentioned, constituted property in the said Kingdom under and by virtue of the laws thereof. The plaintiff, Direction der Disconto-Gesellschaft, was at all times after the outbreak of said war, at the time of the seizure hereinafter mentioned, and until the conclusion of peace between said Kingdom and Germany, an alien enemy of the said Kingdom.

8. Said certificates and the shares represented thereby, and all of the right, title and interest of the plaintiff in them and either of

them, were duly seized, captured and taken over by the defendant, Public Trustee, acting as Custodian of Enemy Property as aforesaid, on or prior to the 27th day of March, 1918, and were duly vested in said Public Trustee by a vesting order duly made by the said Board of Trade, a Department of the British Government, upon its behalf, on or about said 27th day of March 1918.

9. By virtue of such seizure, capture and taking over and the entry of said vesting order, and the laws of said United Kingdom of Great Britain and Ireland, the said defendant, Public Trustee, became vested with the ownership of said certificates and the shares represented thereby and of every right, title and interest of the plaintiff therein or in either of them, and entitled to dispose of the same. Under and pursuant to the laws of the said Kingdom the said vesting order had the same effect as though the said certificates and shares, and every right, title and interest of plaintiff in them or in either of them, had been then and there duly and voluntarily transferred, conveyed and delivered to the said defendant, Public Trustee, by the said plaintiff, Direction der Disconto-Gesellschaft.

10. On or about the 28th day of June, 1919, said United Kingdom of Great Britain and Ireland, and the States Allied and Associated with it in the said war against Germany on the one hand, and Germany on the other, by their duly authorized agents and representatives respectively, entered into and signed an International Treaty of Peace known as the "Treaty of Versailles."

11. Thereafter and prior to the 10th day of January 1920, the said Treaty of Versailles was duly ratified by the Government of the United Kingdom of Great Britain and Ireland and by the Government of Germany and upon the said 10th day of January 1920 ratifications of said Treaty were duly exchanged by said Governments and the said Treaty by its terms became effective between them.

12. Subsequent to the negotiation and signature of the said Treaty of Versailles, and both prior and subsequent to the exchange of ratifications thereof as aforesaid, the Parliament of the United Kingdom of Great Britain and Ireland duly enacted certain statutes known as the "Treaty of Peace Acts," and the King of said Kingdom duly issued pursuant to such acts certain Orders in Council known as the "Treaty of Peace Orders." The effect of the said statutes and orders under and by virtue of the Laws of the said Kingdom was to, and they did, give to the said Treaty of Versailles and in particular sections "III," "IV," "V," "VI," and "VII" of Part X thereof, full force [fol. 38] and effect as law of said Kingdom as of the date of the taking effect of the said Treaty as aforesaid.

13. The said Treaty of Versailles was duly published and promulgated by Germany and issued in the collection of Imperial Statutes thereof, and subsequent to the negotiation and signature of the said Treaty and both prior and subsequent to the exchange of ratifications thereof as aforesaid, there were duly enacted in Germany certain national statutes relating thereto. The effect of the publi-

cation, promulgation and issuance of the said Treaty as aforesaid and of the enactment of the said statutes under and by virtue of the laws of Germany was to, and they did, give effect to the said Treaty of Versailles as a German Imperial or National Statute.

14. In and by the terms and provisions of the said Treaty of Versailles, and in particular Part X thereof, the laws of both the United Kingdom of Great Britain and Ireland and of Germany, it was and is provided that as between the said Kingdom or its nationals on the one hand and Germany or its nationals on the other hand, all the exceptional war measures, or measures of transfer, or acts done in execution of such measures by said Kingdom shall be and they are considered as final and binding. Said exceptional war measures, measures of transfer and acts done in execution of such measures as provided in the said Treaty and laws, include all legislative, administrative or judicial measures of said Kingdom which were taken and which had as an object the seizure of enemy assets in whatsoever form or in whatsoever place, as well as all measures of said Kingdom directing the devolution of ownership in enemy property upon a person other than enemy owner without his consent, or the cancelling of titles or securities, together with all acts of said Kingdom done in execution of any of such measures, including all orders of Government Departments or Courts applying such measures to enemy property. Said exceptional war measures, measures of transfer and acts done in execution of such measures include the order, measures and acts wherein and whereby the devolution of the [fol. 39] title of plaintiff in and to the certificates and shares set forth in the bill of complaint herein, upon the defendant, Public Trustee, as Custodian of Enemy Property on behalf of said Kingdom, were effected or directed.

In and by the terms and provisions of the said Treaty and laws it was and is further provided that the validity of vesting orders and of any other orders of any Department of the Government or Court of said Kingdom, made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests, including the vesting order of March 27, 1918 hereinbefore mentioned, was and is confirmed; that the interests of all persons, including every right, title and interest of the plaintiff in and to the certificates and shares set forth in the bill of complaint herein, shall be and they are regarded as having been effectively dealt with by any order dealing with property in which they might be interested; that no question should or shall be raised as to the regularity of the transfer of any property rights or interests dealt with in pursuance of any such order including the said order dated March 27, 1918 as aforesaid, and that every action taken with regard to any property as regards any matter whatsoever in pursuance of orders of any Department of the Government or Court of said Kingdom made or given, or purporting to be made or given, in pursuance of war legislation thereof with regard to enemy property, rights, or interests, including the said vesting order dated March 27, 1918 as above mentioned, was and is confirmed.

15. In and by the terms and provisions of the said Treaty of Versailles and in particular Part X thereof, and of the legislation of Germany passed pursuant thereto and for the purpose of giving effect to same, and of the laws of Germany, the Government of Germany duly took over and acquired property of its nationals as therein specified, including every right, title and interest of the plaintiff in and to the certificates and shares set forth in the bill of complaint [fol. 40] herein, and duly transferred the said property to the defendant, Public Trustee, as Custodian of Enemy Property on behalf of the United Kingdom of Great Britain and Ireland, to be applied and the proceeds thereof to be credited to Germany by said Kingdom as therein provided, in payment on account of the obligations of Germany and its nationals to the said Kingdom and its nationals arising out of the said war and otherwise, and Germany duly agreed to compensate its nationals for said property.

16. Certificates of stock in American corporations other than those described in the bill of complaint herein and which were similarly seized by the Public Trustee have been sold by him. The proceeds of some such sales have been already credited to and accepted by Germany under the provisions of the Treaty of Versailles. In some instances Germany has made payment to its nationals whose certificates of stock in United States corporations were so seized and sold by the Public Trustee and the proceeds credited to Germany.

17. In and by the terms and provisions of the said Treaty of Versailles and of subdivision 2 of the annex to Article 297 in Section IV of Part X thereof, it was provided as follows:

"No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of, or under the direction of any legal authority or Department of the Government of such a Power by Germany or by any German National wherever resident in respect of any act or omission with regard to his property, rights or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power."

18. All of the right, title and interest of the plaintiff in and to the said certificates and the shares represented thereby were duly divested and the same were vested in the defendant, Public Trustee, as Custodian of Enemy Property on behalf of the United Kingdom of Great Britain and Ireland, and every act or omission complained of by the plaintiff in its bill of complaint herein was done pursuant to and in [fol. 41] accordance with the exceptional war measures, laws and regulations of the said Kingdom.

19. On or about the 25th day of August, 1921, the Governments of the United States and Germany duly entered into and signed at Berlin an International Treaty of Peace known as the "Treaty of Berlin." Ratifications of said treaty were duly exchanged by the

said Governments at Berlin on or about the 11th day of November 1921 and the said Treaty then and there took effect in accordance with its terms.

20. Thereafter and on or about November 14, 1921 the said Treaty was duly proclaimed by the President of the United States and the same thereupon became and it now is a part of the law of the United States.

21. The said Treaty of Berlin was duly published and promulgated by Germany and issued in the collection of Imperial Statutes thereof, and subsequent to the negotiation and signature of the said Treaty and both prior and subsequent to the exchange of ratifications thereof as aforesaid, there were duly enacted in Germany certain national statutes relating thereto. The effect of the publication, promulgation and issuance of the said Treaty as aforesaid and of the enactment of the said statutes under and by virtue of the laws of Germany was to, and they did, give effect to the said Treaty of Berlin as a German Imperial or National Statute.

22. In and by the terms and provisions of the said Treaty of Berlin and the laws of the United States of America it was and is provided that no claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of said Power by Germany or by any German National wherever resident in respect of any act or omission with regard to his property rights or interests during the said war or in preparation for said war, and that similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power.

23. The plaintiff herein was at all the times mentioned in the said Treaty of Berlin and now is a German National resident in Germany and this action is one brought by said German National against an Allied or Associated Power and nationals thereof within the prohibition of the said Treaty and the Laws of the United States.

24. Under and by virtue of the terms and provisions of the said Treaty of Berlin and of the Law of the United States and of the law of Nations, the terms and provisions of the said Treaty of Versailles creating rights and advantages in the property of German Nationals for the benefit of the United Kingdom of Great Britain and Ireland, have become and they now are a part of the law of the United States of America.

25. Among the rights in property of German Nationals so created in said Treaty of Versailles for the benefit of the said United Kingdom of Great Britain and Ireland, is the right of ownership of the certificates and shares of stock which are the subject of this suit and of every right, title and interest therein, which ownership was established and vested thereby in the defendant, Public Trustee.

26. At all times since the seizure, capture and taking over of the said certificates and shares and the making of the said vesting order of March 27, 1918, and since the effective date of the said Treaties of Versailles and Berlin and of the laws of the said United Kingdom of Great Britain and Ireland and of Germany and of the United States as hereinbefore set forth, the said certificates set forth in the bill of complaint herein and the shares represented thereby and every right, title and interest in them or either of them, have belonged and now belong, under and by virtue of the Laws of the said United Kingdom of Great Britain and Ireland, of Germany and of the United States, to the said United Kingdom of Great Britain and Ireland, and have been at all of such times and they now are [fol. 43] subject to the disposal thereof through the agency of the defendant, Public Trustee, acting as Custodian of Enemy Property as aforesaid, and this plaintiff has been since all of said dates and it now is without any right, title or interest in or to the said certificates or the shares represented thereby, and without right to institute or prosecute this suit, and this Honorable Court has been at all times since the proclamation of the said Treaty of Berlin as hereinbefore set forth and it now is, by reason thereof, without jurisdiction of the subject matter of this suit or of the parties hereto.

Wherefore the defendants Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, co-partners trading as Marks, Bulteel, Mills & Co., pray that the bill of complaint herein be dismissed and that they have such other or further decree or relief in the premises as may be just and equitable.

Coudert Brothers, Solicitors for Defendants Egremont John Mills, Walter Clarke, Morris Nathaniel Julius, and Donnell Shepard Post, Co-partners, Trading as Marks, Bulteel, Mills & Co. Frederic R. Coudert, Howard Thayer Kingsbury, Mahlon B. Doing, of Counsel.

Office & Post Office Address: #2 Rector Street, Borough of Manhattan, City of New York.

[fol. 44] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

Equity. No. 29-33

BANK FÜR HANDEL UND INDUSTRIE, a Corporation, Plaintiff,

vs.

UNITED STATES STEEL CORPORATION, a Corporation; PUBLIC
Trustee, a Corporation; English Association of American Bond &
Shareholders, Limited, a corporation; London & Liverpool Bank
of Commerce, Limited, a Corporation; Herbert Hopkins, Indi-
vidually and as Liquidator of London & Liverpool Bank of Com-
merce, Limited, and Violet Gertrude Fraser, as Executrix of the
Will of Thomas Fraser, Deceased, Defendants.

AMENDED BILL OF COMPLAINT

To the Honorable the Judges of the District Court of the United
States for the Southern District of New York:

The above named Plaintiff, for its Bill of Complaint, herein al-
leges:

1. That Plaintiff, Bank für Handel und Industrie, is and has
since August 1, 1914, been a corporation duly organized by and
existing under the laws of the Empire of Germany and a citizen of
said Empire, having its principal place of business at Berlin, Ger-
many.

2. That the Defendant, United States Steel Corporation, is a cor-
poration duly organized by and existing under the laws of the State
of New Jersey and a citizen of said State, having its principal place
of business therein; that Defendant, Public Trustee, is a corporation
[fol. 45] sole- created by and existing under the laws of the United
Kingdom of Great Britain and Ireland, a public office of said King-
dom, having its principal offices at London, England; that the De-
fendant, English Association of American Bond & Shareholders, Lim-
ited, is a corporation duly organized by and existing under the laws of
the Kingdom of Great Britain and a citizen of said Kingdom, having
its principal place of business at London, therein; that the Defend-
ant, London and Liverpool Bank of Commerce, Limited, is a cor-
poration duly organized by and existing under the laws of the King-
dom of Great Britain and a citizen of said Kingdom, having its
principal place of business at London, therein, and is now in liqui-
dation in the manner prescribed by the laws of said Kingdom; that
the Defendant, Herbert Hopkins, is a citizen of the Kingdom of
Great Britain, residing at London, therein and that he is duly quali-
fied under the laws of said Kingdom as liquidator of said London &
Liverpool Bank of Commerce, Limited; that the defendant, Violet
Gertrude Fraser, is the duly qualified executrix of the will of

Thomas Fraser, deceased, and is, and her deceased was, a citizen of the Kingdom of Great Britain, residing at London, therein.

3. That this suit arises between citizens and subjects of foreign states and a citizen of a state of the United States, and that the value in controversy to the Plaintiff herein exceeds the sum of \$3,000.00, exclusive of interest and costs; that this suit involves a construction of a Treaty of the United States in that defendant, Public Trustee, insists that he has title to the shares herein involved by reason, among other things, of the Treaty of Berlin and the laws of the United States and thus has created a cloud upon Plaintiff's title to said shares; that this suit also arises under the Constitution of the United States in that said Treaty of Berlin insofar as it is relied upon by defendant to defeat plaintiff's title to said shares would deprive Plaintiff of its property without due process of law in violation of Amendment five of said Constitution of the United States.

[fol. 46] 4. That at the outbreak of the war between Great Britain and Germany in 1914, Plaintiff owned one hundred shares of common capital stock of the United States Steel Corporation which were, at the time of the seizure hereinafter mentioned, represented by certificates Numbers H-426734/43, inclusive, for ten shares each, registered in the name of Thomas Frazer and Herbert Hopkins, and said certificates, at all such times, were held by Defendant, London & Liverpool Bank of Commerce, Limited, for Plaintiff in open running account subject to adjustment.

5. That during said war, the Defendant, Public Trustee, pursuant to the laws of England, did take and hold said certificates; that in December, 1922, the English Association of American Bond & Shareholders, Limited, at the direction of, as the agent, of and on sole behalf of, said Trustee, did surrender to the United States Steel Corporation the certificates mentioned in paragraph four (4) and procured the transfer thereof on the books of the United States Steel Corporation into the name of said English Association and the issuance to it of new certificates, viz: Numbers H-431318/26, inclusive, for ten shares each, and certificate Number H-431760 for ten shares, the first mentioned nine certificates having been issued under date of December 1, 1922, and the last mentioned certificate under date of December 9, 1922; that said last mentioned ten certificates have ever since been, and now are, held by said English Association as agent of said Trustee, said association having no interest in said certificates other than as agent of said Trustee.

6. That since said outbreak of war, Plaintiff has done nothing to diminish its ownership of said shares and is now the owner of all said shares.

7. That neither said Fraser nor said Defendants, Hopkins, or Violet Frazer, as executrix of Fraser's will, now have, or ever have had any right, title or interest whatsoever, in or to said shares and that none of said shares or certificates have been demanded or seized [fol. 47] by the Alien Property Custodian of the United States.

8. That now Plaintiff cannot exercise its full rights of ownership in said share because of the said taking and holding of said certificates; that, on Plaintiff's demand, said Trustee refused to surrender said Certificates and said Steel Corporation refused to pay Plaintiff dividends upon said shares or to transfer said stock at Plaintiff's direction while said certificates were outstanding as aforesaid; that Plaintiff therefore suffers irreparable damage against which it has no adequate remedy or relief at law and is ready and willing and hereby offers to do whatever equity requires in the premises:

Wherefore plaintiff prays:

(a) That Plaintiff may be adjudged and decreed by this Court sole and lawful owner of all said shares;

(b) That said United States Steel Corporation be ordered by judgment and decree of this Court to refuse transfer to any said shares or certificates thereof upon application by said Public Trustee of England or his agent, or any Defendant herein;

(c) That said United States Steel Corporation be ordered by judgment and decree of this Court to enter Plaintiff as owner of said shares upon its books and records, and do, under such terms and conditions as this Court may impose, cancel the outstanding said certificates upon its books and issue new certificates in their place and stead to Plaintiff, and do pay to Plaintiff all unpaid dividends declared and payable on said shares to date of such decree;

(d) That Plaintiff may have such further or other general relief in the premises as the nature and circumstances of this case may require and shall to this Honorable Court seem meet and that the Defendants, United States Steel Corporation, Public Trustee, English Association of American Bond & Shareholders, Limited, London [fol. 48] and Liverpool Bank of Commerce, Limited, and Violet Gertrude Fraser, as executrix of the will of Thomas Fraser, deceased, be compelled to answer all and singular the premises in this Bill (but not under oath, answer under oath hereby waived), and that the Court grant Plaintiff due process by subpoena directed to said Defendants, requiring and commanding each of them to appear herein to answer this, the Plaintiff's Bill, and to stand to, perform and abide such decree as to this Honorable Court will seem meet.

Albert M. Austin, Solicitor for Plaintiff.

Office and Post Office Address, 120 Broadway, New York City, N. Y.

[fol. 49]

IN UNITED STATES DISTRICT COURT

Equity. No. E-29-33

[Title omitted]

NOTICE OF APPEARANCE OF DEFENDANT UNITED STATES STEEL CORPORATION

To the Clerk of the District Court of the United States in and for the Southern District of New York:

Please enter the appearance herein of United States Steel Corporation, a corporation created and existing under the laws of the State of New Jersey, United States of America, and the appearance of the undersigned, as Solicitor for said defendant.

This appearance is without prejudice to the objections of said defendant, United States Steel Corporation, that by reason of the provisions of the Treaty of Versailles, and the Treaty of Berlin, and the laws of the United States, Great Britain and Germany, this Honorable Court is without jurisdiction to entertain this suit and that this suit is not maintainable against the defendants or any [fol. 50] of them. Said objections are hereby expressly reserved and are not waived by this appearance by which said defendant waives only (1) the lack of service of process upon it, and (2) the bringing of this suit in a district court of the United States other than the district of which said defendant is a resident.

Dated, New York, April 3rd, 1924.

Yours, etc., Kenneth B. Halstead, Solicitor for Defendant
United States Steel Corporation.

Office and Post Office Address, No. 71 Broadway, Borough of Manhattan, New York, N. Y.

[fol. 51]

IN UNITED STATES DISTRICT COURT

Equity. No. 29-33

[Title omitted]

NOTICE OF APPEARANCE OF DEFENDANT, PUBLIC TRUSTEE

To the Clerk of the District Court of the United States in and for the Southern District of New York:

Please enter the appearance herein of the defendant, Public Trustee, a corporation sole, created by and existing under the Laws of the United Kingdom of Great Britain and Ireland, a public office of said Kingdom, and the appearance of the undersigned as solicitors for said defendant.

This appearance is without prejudice to the objections of said defendant, Public Trustee, that by reason of the provisions of the Treaty of Versailles and the Treaty of Berlin, and the Laws of the United States, Great Britain and Germany, this Honorable Court is without jurisdiction to entertain this suit and that this suit is not maintainable against the defendants or any of them. Said objections are hereby expressly reserved and are not waived by this appearance by which said defendant waives only the lack of service [fol. 52] of process upon him and his immunity from suit as an officer of a foreign sovereign government in his official capacity.

Dated, March 31st, 1924.

Yours, etc., Coudert Brothers, Solicitors for the Defendant Public Trustee.

Office & Post Office Address, No. 2 Rector Street, Borough of Manhattan, New York City.

[fol. 53] IN UNITED STATES DISTRICT COURT

Equity. No. 29-33

[Title omitted]

NOTICE OF APPEARANCE OF DEFENDANT ENGLISH ASSOCIATION OF
AMERICAN BOND & SHAREHOLDERS, LIMITED

To the Clerk of the District Court of the United States in and for the Southern District of New York:

Please enter the appearance herein of the defendant, English Association of American Bond & Shareholders Limited, a corporation and the appearance of the undersigned as solicitors for said defendant.

This appearance is without prejudice to the objections of said defendant, English Association of American Bond & Shareholders, Limited, that by reason of the provisions of the Treaty of Versailles and the Treaty of Berlin, and the Laws of the United States, Great Britain and Germany, this Honorable Court is without jurisdiction to entertain this suit and that this suit is not maintainable against the defendants or any of them. Said objections are hereby expressly reserved and are not waived by this appearance by which said defendant waives only the lack of service of process upon it.

Dated March 31, 1924.

Yours, etc., Coudert Brothers, Solicitors for the Defendant
English Association of American Bond & Shareholders,
Ltd.

Office & P. O. Address, 2 Rector Street, New York City.

[fol. 54]

IN UNITED STATES DISTRICT COURT

Equity. No. 29-33

[Title omitted]

NOTICE OF APPEARANCE OF DEFENDANT LONDON & LIVERPOOL BANK
OF COMMERCE, LIMITED

To the Clerk of the District Court of the United States in and for
the Southern District of New York:

Please enter the appearance herein of the defendant, London & Liverpool Bank of Commerce, Limited, a corporation, and the appearance of the undersigned as solicitors for said defendant.

This appearance is without prejudice to the objections of said defendant, London & Liverpool Bank of Commerce, Limited, that by reason of the provisions of the Treaty of Versailles and the Treaty of Berlin, and the Laws of the United States, Great Britain and Germany, this Honorable Court is without jurisdiction to entertain this suit and that this suit is not maintainable against the defendants or any of them. Said objections are hereby expressly reserved and are not waived by this appearance by which said defendant waives only the lack of service of process upon it.

Dated March 31, 1924.

Yours, etc., Coudert Brothers, Solicitors for the Defendants
London & Liverpool Bank of Commerce, Limited.

Office & Post Office Address, No. 2 Rector Street, New York City.

[fol. 55]

IN UNITED STATES DISTRICT COURT

Equity. No. 29-33

[Title omitted]

NOTICE OF APPEARANCE OF DEFENDANT HERBERT HOPKINS

To the Clerk of the District Court of the United States in and for the
Southern District of New York:

Please enter the appearance herein of the defendant, Herbert Hopkins, individually and as liquidator of London & Liverpool Bank of Commerce, Limited, and the appearance of the undersigned as solicitors for said defendant.

This appearance is without prejudice to the objections of said defendant, Herbert Hopkins, individually and as liquidator of London & Liverpool Bank of Commerce, Limited, that by reason of the provisions of the Treaty of Versailles and the Treaty of Berlin, and the Laws of the United States, Great Britain and Germany, this Honorable Court is without jurisdiction to entertain this suit and

that this suit is not maintainable against the defendants or any of them. Said objections are hereby expressly reserved and are not waived by this appearance by which said defendant waives only the lack of service of process upon him.

Dated March 31, 1924.

Yours, etc.,

Coudert Brothers, Solicitors for the Defendant Herbert Hopkins, Individually and as Liquidator of London & Liverpool Bank of Commerce, Limited.

Office & Post Office Address 2 Rector Street, New York City.

[fol. 56]

IN UNITED STATES DISTRICT COURT

Equity. No. 29-33

[Title omitted]

NOTICE OF APPEARANCE OF DEFENDANT VIOLET GERTRUDE FRASER

To the Clerk of the District Court of the United States in and for the Southern District of New York:

Please enter the appearance herein of the defendant, Violet Gertrude Fraser, as executrix of the will of Thomas Fraser, deceased and the appearance of the undersigned as solicitors for said defendant.

This appearance is without prejudice to the objections of said defendant, Violet Gertrude Fraser, as executrix of the will of Thomas Fraser, deceased, that by reason of the provisions of the Treaty of Versailles and the Treaty of Berlin, and the Laws of the United States, Great Britain and Germany, this Honorable Court is without jurisdiction to entertain this suit and that this suit is not maintainable against the defendants or any of them. Said objections are hereby expressly reserved and are not waived by this appearance by which said defendant waives only the lack of service of process upon her.

Dated March 31, 1924.

Yours, etc.,

Coudert Brothers, Solicitors for the Defendant Violet Gertrude Fraser, as Executrix of the Will of Thomas Fraser, dec'd.

Office & P. O. Address, 2 Rector Street, New York City.

[fol. 57]

IN UNITED STATES DISTRICT COURT

Equity. No. E-29-33

[Title omitted]

ANSWER OF DEFENDANT UNITED STATES STEEL CORPORATION

The defendant United States Steel Corporation (sometimes hereinafter referred to as the "Steel Corporation"), by Kenneth B. Halstead, its solicitor, answering the amended Bill of Complaint of the plaintiff herein:

1. a. Admits the allegations contained in paragraphs of said bill of complaint numbered "1" and "2".

b. States that this defendant Steel Corporation is without knowledge as to whether the plaintiff has title to the shares of stock mentioned in paragraph of said bill of complaint numbered "3" and as to whether a cloud on plaintiff's alleged title has been created. States that it is without knowledge as to whether the Treaty of Berlin, in so far as it is relied upon by the defendant Public Trustee to defeat plaintiff's title to the shares of stock mentioned in paragraph of said bill of complaint numbered "3", would deprive plaintiff of its property without due process of law in violation of Amendment Fifth of the Constitution of the United States. Except as herein stated, admits the allegations contained in said paragraph "3".

c. States that this defendant Steel Corporation is without knowledge as to whether Fraser or the defendants Hopkins or Violet Fraser, as executrix of Fraser's will, now have or ever have had any right, title or interest in or to the shares of stock mentioned in paragraph of said bill of complaint numbered "7". Admits that none of said shares or certificates have been demanded or seized by the Alien Property Custodian of the United States.

d. Admits the allegations contained in paragraphs "4" and "5" of said bill of complaint, subject to the explanations hereinafter set forth in paragraphs "4" to "12", inclusive.

2. States that this defendant Steel Corporation is without knowledge as to whether the plaintiff is now the owner of all or any of the shares of stock referred to in paragraph numbered "6" of said bill of complaint. Admits that since the outbreak of the war between [fol. 59] Great Britain and Germany in 1914, plaintiff has done nothing to diminish its ownership of said shares, excepting in so far as the plaintiff's ownership may have been transferred to or become vested in the defendant, Public Trustee, and excepting in so far as the United States of America may have acquired some right, title or interest in said shares by reason of the facts hereinafter set forth.

3. States that this defendant Steel Corporation is without knowledge as to whether the plaintiff has any rights or ownership in said shares or has suffered any damage in respect thereto, or can exercise any rights of ownership therein. Admits the taking and holding by the defendant, Public Trustee, of the certificates referred to in paragraph "8" of said bill of complaint, and said Trustee's refusal to surrender said certificates on plaintiff's demand and this defendant Steel Corporation's refusal to pay dividends upon said shares or to transfer said stock at the plaintiff's direction while said certificates are outstanding.

4. Alleges that until on or about the 20th day of March, 1923, this defendant Steel Corporation had received no notice of any claim of ownership or other interest in said shares of stock by either the plaintiff or the defendant, Public Trustee, or any other person or corporation whatsoever, excepting only the apparent ownership of the defendant, English Association of American Bond & Shareholders, Limited, and the preceding stockholders of record. The apparent ownership of the said defendant English Association of American Bond & Shareholders, Limited, was evidenced by the fact that at all times since the dates mentioned in paragraph "5" of the bill of complaint, to wit, December 1st, 1922, and December 9th, 1922, respectively, said defendant was the stockholder of record of said shares of stock, and was registered as such on the books of this defendant Steel Corporation, and by the further fact that the said certificates representing said shares were outstanding in the name of said defendant. At all times between February 16th, 1916, and the dates of the respective transfers of the shares of stock into the name of the English Association of American Bond & Shareholders, Limited, as alleged in paragraph "5" of the bill of complaint, the defendant, Herbert Hopkins, and one Thomas Fraser, now deceased, whose Executrix is made a party defendant herein, were the stockholders of record of said shares of stock, and prior to said 16th day of February, 1916, other parties were the stockholders of record of said shares of stock.

5. Alleges that since the time when said defendant English Association of American Bond & Shareholders, Limited, became the stockholder of record of said shares of stock, and until on or about the 20th day of March, 1923, this defendant Steel Corporation paid the dividends accruing on said shares of stock to said defendant, English Association of American Bond & Shareholders, Limited, or in accordance with its written order, and otherwise recognized said last mentioned defendant as owner of said shares of stock, and prior to the time when said defendant became the stockholder of record, recognized the preceding stockholders of record as owners of said shares of stock; all of which was in accordance with this defendant Steel Corporation's rights and duties under its Certificate of Incorporation, its By-laws and the common and statute law of the State of New Jersey.

6. Alleges that on or about said 20th day of March, 1923, the plaintiff, or other persons in its behalf, gave notice to this defendant Steel Corporation to the general effect that the plaintiff was the owner of said shares of stock and entitled to the dividends thereon, [fol. 61] notwithstanding the fact that the certificates representing the same had been seized by and were in the possession of the defendant, Public Trustee, acting under the laws of the Kingdom of Great Britain and Ireland, and that any transfer of said shares of stock without the plaintiff's assent, or the payment of any dividends thereon to the defendant, English Association of American Bond & Shareholders, Limited, the defendant, Public Trustee, or to any other person or corporation without the plaintiff's assent, would be in contravention of the plaintiff's rights under the laws of the State of New Jersey, and under the laws and Constitution of the United States of America—particularly Article V of the Amendments to the Constitution of the United States—in that any recognition of the rights of ownership asserted by the defendant, Public Trustee, under and by virtue of the laws of the Kingdom of Great Britain and Ireland would be depriving the plaintiff of its property without due process of law; and to the further general effect that any such action by this defendant Steel Corporation would render this defendant Steel Corporation liable in damages to the plaintiff.

7. Alleges that thereafter claim was made by or on behalf of the defendant, Public Trustee, to the general effect that the defendant, Public Trustee, was the owner of said shares of stock and of the certificates representing the same on the ground, among others, (1) that by virtue of the seizure of said certificates in the Kingdom of Great Britain and Ireland, and pursuant to the laws thereof, title to said shares of stock and said certificates representing the same had vested in the defendant, Public Trustee; and (2) that by virtue of the Treaty of Versailles and the Treaty of Berlin, title to said shares of stock and said certificates representing the same had vested in the [fol. 62] defendant, Public Trustee.

8. Alleges that thereupon this defendant Steel Corporation, being at all times after notice of such conflicting claims, a disinterested stakeholder as between said conflicting claimants, to wit, the plaintiff, the defendant, Public Trustee, and the defendant, English Association of American Bond & Shareholders, Limited, advised said claimants to the effect that it would decline to recognize the alleged ownership of any of said claimants or to pay dividends to any of said claimants until the respective rights, title and interest in and to the said shares of stock, the said certificates representing the same, and the said dividends should be established or judicially determined by a court of competent jurisdiction.

9. Alleges that the State of New Jersey, being the State under whose laws this defendant Steel Corporation was organized and now exists, heretofore duly enacted the following laws:

A. Sections 1, 7, 8, 11, 19, 20, 44, 111, 112 and 113 of Chapter 185, Laws of 1896, entitled "An Act concerning corporations (Re-

vision of 1896)," certain of said sections having been subsequently amended as follows:

Section 7 by Pamphlet Laws, 1905, page 515;

Section 8 by Section 2 of Pamphlet Laws, 1898, page 407;

Section 19 by Pamphlet Laws, 1911, page 79.

B. Sections 1 and 7 of an act entitled "An Act for the relief of creditors against absent, fraudulent and absconding debtors (Revision of 1901)," Pamphlet Laws, 1901, pages 158 and 160.

C. Sections 4, 5, 6 and 7 of an act entitled "An Act respecting executions," Revision 1877, pages 389 and 390.

[fol. 63] D. An act entitled "An Act to make uniform the law of transfer of shares of stock in corporations," Chapter 191, Laws of 1916, approved March 18, 1916.

And this defendant Steel Corporation begs leave to refer to said statutes with the same force and effect as if herein set forth in full, and to put in evidence upon the trial of this action copies thereof or of parts thereof.

10. Alleges that under the common and statute law of the State of New Jersey the situs of the shares of stock of this defendant Steel Corporation is within the State of New Jersey, for some purposes at least, and begs leave to put in evidence upon the trial of this action any and all pertinent decisions and opinions of the courts of the State of New Jersey.

11. Alleges that in and by the Amended Certificate of Incorporation of this defendant Steel Corporation duly filed and recorded in the office of the Secretary of State of the State of New Jersey, on or about April 1, 1901, it is, among other things, provided as follows:

"The business or purpose of the Company is from time to time to do any one or more of the acts and things herein set forth; and it may conduct its business in other States and in the Territories and in foreign countries, and may have one office or more than one office, and keep the books of the Company outside of the State of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage and convey real and personal property either in or out of the State of New Jersey."

"Subject always to by-laws made by the Stockholders, the Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the Stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting."

12. Alleges that By-laws were duly adopted by this defendant Steel [fol. 64] Corporation in or about the month of April, 1901, wherein are contained, among other provisions, the following:

"Article V.—Capital Stock—Seal

Section 1. Certificates of Shares.—The certificates for shares of the capital stock of the Company shall be in such form, not inconsistent with the certificate of incorporation, as shall be prepared or be approved by the Board of Directors. The certificates shall be signed by the president or a vice-president, and also by the treasurer or an assistant treasurer.

All certificates shall be consecutively numbered. The name of the person owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the Company's books.

No certificate shall be valid unless it is signed by the president or a vice-president, and by the treasurer or an assistant treasurer.

All certificates surrendered to the Company shall be canceled, and no new certificate shall be issued until the former certificate for the same number of shares of the same class shall have been surrendered and canceled.

Section 2. Transfer of Shares.—Shares in the capital stock of the Company shall be transferred only on the books of the Company by the holder thereof, in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares.

Section 3. Regulations.—The Board of Directors and the Finance Committee also, shall have power and authority to make all such rules and regulations as respectively they may deem expedient, concerning the issue, transfer and registration of certificates for shares of the capital stock of the Company."

"Article VI.—Amendments

Section 1. The Board of Directors shall have power to make, amend and repeal the By-laws of the Company, by a vote of a majority of all of the directors, at any regular or special meeting of the Board, provided that notice of intention to make, amend or repeal the By-laws in whole or in part shall have been given at the next preceding meeting; or without any such notice, by a vote of two-thirds of all the directors."

And that the above quoted provisions of said By-laws have not been amended or repealed since the original adoption thereof, and at all times since April, 1901, have been in full force and effect.

As a first separate and distinct defense:

[fol. 65] 13. Alleges that a Treaty of Peace between the United States of America and Germany restoring friendly relations (hereinafter referred to as the Treaty of Berlin) was signed at Berlin on August 25, 1921; that ratification thereof was advised by the Senate of the United States on October 18, 1921; that said Treaty was ratified by the President of the United States on October 21, 1921, and was ratified by Germany on November 2, 1921; that ratifications

were exchanged between the two governments at Berlin on November 11, 1921; that said Treaty was proclaimed by the President of the United States on November 14, 1921, and that thereupon, and pursuant to Article VI of the Constitution of the United States, said Treaty of Berlin became the supreme law of the land.

14. Alleges that the Treaty of Versailles was concluded on June 28, 1919, and that pursuant to Article I of the Treaty of Berlin, Germany undertook to accord to the United States and agreed that the United States should have and enjoy all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles, and that pursuant to Article II of said Treaty of Berlin, it was understood between the said parties that the rights and advantages stipulated in the Treaty of Versailles for the benefit of the United States which it was intended the United States should have and enjoy were those defined in certain sections and parts, including Articles 297 and 298 of Section IV of Part X.

15. Alleges that under subdivision (b) of Article 297, and under subdivision 9 of the Annex to Article 298, above mentioned, it is provided as follows:

"(b) Subject to any contrary stipulations which may be provided for in the present Treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights and interests belonging at the date of the coming into force of the present Treaty to [fol. 66] German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates, including territories ceded to them by the present Treaty.

The liquidation shall be carried out in accordance with the laws of the Allied or Associated State concerned, and the German owner shall not be able to dispose of such property, rights or interest nor to subject them to any charge without the consent of that State.

German nationals who acquire ipso facto the nationality of an Allied or Associated Power in accordance with the provisions of the present Treaty will not be considered as German nationals within the meaning of this paragraph."

"Until completion of the liquidation provided for by Article 297, paragraph (b), the property, rights and interests of German nationals will continue to be subject to exceptional war measures that have been or will be taken with regard to them."

16. Alleges that neither the President of the United States, the Alien Property Custodian, nor any other person thereunto authorized by the terms of the Trading with the Enemy Act, has required or demanded the transfer to the Alien Property Custodian of the shares of stock mentioned in the bill of complaint, and that by reason of the termination of the war between the United States and Germany on July 2, 1921, pursuant to the above mentioned proclamation of the President of the United States, no valid requirement or demand for the transfer of said shares of stock can be issued under the now existing provisions of said Trading with the Enemy Act.

17. Alleges that, by virtue of the provisions set forth in paragraph 15 hereof, the United States of America has or may claim to have some rights, title or interest in, or lien upon, said shares of stock and said certificates; that by reason thereof the United States is an indispensable or proper party herein; and that therefore either (1) if the United States is an indispensable party herein, this Court has no jurisdiction of this suit, and (2) if the United States is a proper but not indispensable party herein, this Court is required pursuant to Rule XXXIX of the Rules of Practice for the Courts of Equity for the United States, which were promulgated by the Supreme Court of the United States on November 12, 1912, to make its decree herein without prejudice to the rights of the United States of America.

As a second separate and distinct defense:

18. Alleges that in and by the terms and provisions of subdivision 2 of the Annex to Article 297 of Section IV. of Part X. of the said Treaty of Versailles, it is provided as follows:

"No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of such a Power by Germany or by any German national wherever resident in respect of any act or omission with regard to his property, rights or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power."

19. Alleges that, by reason of the provisions set forth in the paragraph next preceding, the plaintiff, being a German national, is or may be precluded from bringing this action or making any other claim or bringing any other action against this defendant Steel Corporation and/or the other defendants herein in any wise effecting the plaintiff's alleged ownership of the shares of stock and the certificates representing the same, which are referred to in the said bill of complaint, and that therefore this Court is or may be without jurisdiction to entertain this suit, and that this suit is not or may not be maintainable against the defendants, or any of them.

Wherefore, this defendant Steel Corporation prays either (1) that [fol. 68] the bill of complaint herein be dismissed; or (2) that this Court determine the respective rights, title and interest of the parties to this suit in and to said stock, and the said certificates representing the same, and the accrued dividends heretofore unpaid thereon, —including the rights asserted by the plaintiff under Article V. of the Amendments to the Constitution of the United States, and the rights asserted by the defendant, Public Trustee, under the Treaty of Berlin, and (3) that no decree shall be entered herein requiring this defendant Steel Corporation to recognize any party as the owner of said stock, or the right of any party to compel this defendant

Steel Corporation to transfer the same upon its books, except upon the surrender to this defendant Steel Corporation of said certificates duly endorsed for purposes of such transfer by the defendants, English Association of American Bond & Shareholders, Limited, or except upon requiring such party to furnish to this defendant Steel Corporation a bond of indemnity in such form, in such amount and with such sureties as shall be approved by this Court to protect this defendant Steel Corporation from all loss, cost and damage which it may at any time suffer by reason of the said certificates remaining outstanding; and (4) that if this Court shall make its decree without prejudice to the rights of the United States of America in and to the said shares of stock, such decree may further provide that this defendant Steel Corporation, in issuing certificates representing the said shares of stock may make an appropriate notation thereon indicating that the said shares of stock are subject to the rights of the United States of America.

Dated New York, April 19th 1924.

United States Steel Corporation, by Geo. K. Lett, Secretary
Kenneth B. Halstead, Solicitor for and of Counsel to
Defendant United States Steel Corporation. Wm. Averell
Brown of Counsel.

Office and Post Office Address, No. 71 Broadway, Borough of Manhattan, New York, N. Y.

[fol. 70]

IN UNITED STATES DISTRICT COURT

Equity. No. 29-33

[Title omitted]

ANSWER OF DEFENDANT PUBLIC TRUSTEE

The defendant, Public Trustee, a corporation sole, created and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, a public office of the said Kingdom, by Coudert Brothers, his solicitors, answers the amended bill of complaint of the abovenamed plaintiff herein as follows:

1. Admits the allegations contained in paragraphs numbered "1," "2," "4" and "5" of the said amended bill of complaint.

2. Admits and alleges that this suit arises between citizens and subjects of foreign states and a citizen of a state of the United States, and that the value in controversy to the plaintiff herein exceeds the sum of \$3,000.00 exclusive of interest and costs; and that this suit arises under and involves the construction of a Treaty of the United States; and that the defendant, Public Trustee, insists that he has title to the shares herein involved by reason, among other things, [fol. 71] of the Treaty of Berlin and the Laws of the United States and alleges and avers that he has such title; admits that this suit

arises under the Constitution of the United States; alleges and avers that said Treaty of Berlin defeats plaintiff's title to said shares; denies that plaintiff has any title to said shares; denies that plaintiff has been or is deprived of any property herein involved without due process of law; and denies each and every allegation contained in paragraph numbered "3" of said amended bill of complaint not hereinbefore specifically admitted or denied.

3. Denies the allegations contained in paragraph numbered "6" of the said amended bill of complaint, that the plaintiff is now the owner of all or any of the shares in said paragraph mentioned. Alleges that under and pursuant to the laws of the United Kingdom of Great Britain and Ireland, of Germany and of the United States, plaintiff has heretofore divested itself and been divested of ownership in and to the said certificates and share and that such ownership has been duly vested in the defendant, Public Trustee, as Custodian of Enemy Property, on behalf of the United Kingdom of Great Britain and Ireland. Admits that since the outbreak of said war plaintiff has done nothing to diminish its ownership of said shares except as in this Answer set forth.

4. Alleges that prior to the seizure hereinafter mentioned the defendant, Herbert Hopkins and Thomas Fraser, testator of the defendant Violet Gertrude Fraser, duly endorsed the said certificates in blank and delivered the same to the defendant, London & Liverpool Bank of Commerce, Limited, and that at all times since said seizure neither the said Herbert Hopkins, Thomas Fraser, Violet Gertrude Fraser, nor any of them, has had or now has any right, title or interest in or to the said certificates or the shares represented [fol. 72] thereby. Admits that none of said certificates or shares has been demanded or seized by the Alien Property Custodian of the United States. Except as herein admitted, denies each and every allegation contained in paragraph numbered "7" of the said amended bill of complaint.

4. a. Denies the allegation contained in paragraph numbered "8" of the said amended bill of complaint, that the plaintiff has any rights of ownership in the said shares or has suffered any damage in respect thereto. Alleges that the plaintiff cannot exercise any rights of ownership in said shares because of the divesting of its ownership in and to the same and the vesting of such ownership in this defendant. Except as thus denied, admits the allegations contained in paragraph numbered "8" of the said amended bill of complaint.

Further answering said amended bill of complaint, the defendant Public Trustee further alleges as follows:

5. The defendant, Public Trustee, as such, has been since on or before the 27th day of November 1914 and now is duly qualified and acting as Custodian of Enemy Property under and pursuant to certain acts of the Parliament of the United Kingdom of Great

Britain and Ireland, known as the Trading With the Enemy Acts, [fol. 73] 1914 to 1918.

6. It is, and and at the time of the seizure hereinafter mentioned was, the law of said United Kingdom of Great Britain and Ireland that all property belonging to alien enemies was subject to be seized by the defendant, Public Trustee, and to be vested in him by orders to that effect made by the Board of Trade, a Department of the Government of said Kingdom or by the High Court of Justice and that upon such vesting the defendant, Public Trustee, became and was entitled to the ownership and possession of such property and the right to transfer the same.

7. The one hundred shares of the common capital stock of the defendant, United States Steel Corporation, mentioned and described in paragraph numbered "4" of the Bill of Complaint herein, were at the outbreak of said War represented by certificates registered in the names of British subjects, resident and domiciled in England, and were duly endorsed in blank and physically located at London, England, in the said United Kingdom of Great Britain and Ireland. At the time of the seizure hereinafter mentioned the said one hundred shares were represented by the certificates Nos. H-426, 734-43 inclusive, mentioned and described in paragraph numbered "4" of the Bill of Complaint herein, registered in the names of the defendant Herbert Hopkins, and Thomas Fraser, testator of the defendant Violet Gertrude Fraser, British subjects, domiciled and resident in England, and were duly endorsed in blank and physically located at London, England. The said one hundred shares and all of the certificates representing the same as aforesaid at all said times, were held for the plaintiff by the defendant, London & Liverpool Bank of Commerce, Limited, a British Banking and Brokerage House, resident of and located in London, England, in an open running account of stock bought and sold and of [fol. 74] credits and debits because of such sales and purchases and other receipts and disbursements and subject to the adjustment of such account. The plaintiff was at the outbreak of said War and at the time of the seizure hereinafter mentioned, indebted to the defendant London and Liverpool Bank of Commerce, Limited, in said open running account, which bank, however, held for said plaintiff securities the value of which was largely in excess of such indebtedness. At all of the times hereinbefore in this paragraph mentioned, the defendant, London and Liverpool Bank of Commerce, Limited, had a general lien upon the said one hundred shares and the certificates representing the same to insure the unpaid balance due to said defendant upon said account, and said lien was recognized and enforceable under and by virtue of the laws of said United Kingdom of Great Britain and Ireland. Said certificates and the shares represented thereby, and every right, title and interest of the plaintiff in them and either of them, at all said times to and including the time of the seizure hereinafter mentioned, constituted property in the said Kingdom under and by virtue of the laws thereof. The plaintiff, Bank für Handel

und Industrie was at all times after the outbreak of said War, at the time of the seizure hereinafter mentioned and until the conclusion of peace between said Kingdom and Germany, an alien enemy of the said Kingdom.

8. Said certificates and the shares represented thereby, and all of the right, title and interest of the plaintiff in them and either of them, were duly seized, captured and taken over by the defendant, Public Trustee, acting as Custodian of Enemy Property as aforesaid, on or prior to the 30th day of April 1917, and were duly vested in said Public Trustee by a vesting order duly made by the said High Court of Justice of the United Kingdom of Great Britain and Ireland upon its behalf, on or about said 30th day of April, 1917.

9. By virtue of such seizure, capture and taking over and the [fol. 75] entry of said vesting order, and the laws of said United Kingdom of Great Britain and Ireland, the said defendant, Public Trustee, became vested with the ownership of said certificates and the shares represented thereby and of every right, title and interest of the plaintiff therein or in either of them, and entitled to dispose of the same. Under and pursuant to the Laws of the said Kingdom the said vesting order had the same effect as though the said certificates and shares, and every right, title and interest of plaintiff in them or in either of them, had been then and there duly and voluntarily transferred, conveyed and delivered to the said defendant, Public Trustee, by the said plaintiff, Bank für Handel und Industrie.

10. On or about the 28th day of June, 1919, said United Kingdom of Great Britain and Ireland, and the States Allied and Associated with it in the said War against Germany on the one hand, and Germany on the other, by their duly authorized agents and representatives respectively, entered into and signed an International Treaty of Peace known as the "Treaty of Versailles."

11. Thereafter and prior to the 10th day of January 1920, the said Treaty of Versailles was duly ratified by the Government of the United Kingdom of Great Britain and Ireland and by the Government of Germany and upon the said 10th day of January 1920 ratifications of said Treaty were duly exchanged by said Governments and the said Treaty by its terms became effective between them.

12. Subsequent to the negotiation and signature of the said Treaty of Versailles, and both prior and subsequent to the exchange of ratifications thereof as aforesaid, the Parliament of the United Kingdom of Great Britain and Ireland duly enacted certain statutes known as the "Treaty of Peace Acts", and the King of said Kingdom duly issued pursuant to such acts certain Orders in Council known as the "Treaty of Peace Orders". The effect of the said statutes and orders under and by virtue of the Laws of the said Kingdom was to, and they did, give to the said Treaty of Versailles and in [fol. 76] particular sections "III," "IV," "V," "VI" and "VII" of

Part X thereof, full force and effect as law of said Kingdom as of the date of the taking effect of the said Treaty as aforesaid.

13. The said Treaty of Versailles was duly published and promulgated by Germany and issued in the collection of Imperial Statutes thereof, and subsequent to the negotiation and signature of the said Treaty and both prior and subsequent to the exchange of ratifications thereof as aforesaid, there were duly enacted in Germany certain national statutes relating thereto. The effect of the publication, promulgation and issuance of the said Treaty as aforesaid and of the enactment of the said statutes under and by virtue of the laws of Germany was to, and they did give effect to the said Treaty of Versailles as a German Imperial or National Statute.

14. In and by the terms and provisions of the said Treaty of Versailles, and in particular Part X thereof, the laws of both the United Kingdom of Great Britain and Ireland and of Germany, it was and is provided that as between the said Kingdom or its nationals on the one hand and Germany or its nationals on the other hand, all the exceptional war measures, or measures of transfer, or acts done in execution of such measures by said Kingdom shall be and they are considered as final and binding. Said exceptional war measures, measures of transfer and acts done in execution of such measures as provided in the said Treaty and laws include all legislative, or administrative or judicial measures of said Kingdom which were taken and which had as an object the seizure of enemy assets in whatsoever form or in whatsoever place, as well as all measures of said Kingdom directing the devolution of ownership in enemy property upon a person other than enemy owner without his consent, or the cancelling of titles or securities, together with all acts of said Kingdom done in execution of any of such measures, including all orders of Government Departments or Courts applying such measures to enemy property. Said exceptional war measures, measures of transfer and acts done [fol. 77] in execution of such measures include the order, measures and acts wherein and whereby the devolution of the title of plaintiff in and to the certificates and shares set forth in the bill of complaint herein, upon the defendant, Public Trustee, as Custodian of Enemy Property on behalf of said Kingdom, were effected or directed.

In and by the terms and provisions of the said Treaty and laws it was and is further provided that the validity of vesting orders and of any other orders of any Department of the Government or Court of said Kingdom, made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests, including the vesting order of April 30, 1917 hereinbefore mentioned, was and is confirmed; that the interests of all persons, including every right, title and interest of the plaintiff in and to the certificates and shares set forth in the bill of complaint herein, shall be and they are regarded as having been effectively dealt with by any order dealing with property in which they might be interested; that no question should or shall be raised as to the regularity of the transfer of any property rights or interests dealt with in pur-

suance of any such order, including the said order dated April 30, 1917, as aforesaid, and that every action taken with regard to any property as regards any matter whatsoever in pursuance of orders of any Department of the Government or Court of said Kingdom made or given, or purporting to be made or given, in pursuance of war legislation thereof with regard to enemy property, rights, or interests, including the said vesting order dated April 30, 1917 above mentioned, was and is confirmed.

15. In and by the terms and provisions of the said Treaty of Versailles and in particular Part X thereof, and of the legislation [fol. 78] of Germany passed pursuant thereto and for the purpose of giving effect to same, and of the Laws of Germany, the Government of Germany duly took over and acquired property of its nationals as therein specified, including every right, title and interest of the plaintiff in and to the certificates and shares set forth in the bill of complaint herein, and duly transferred the said property to the defendant, Public Trustee, as Custodian of Enemy Property on behalf of the United Kingdom of Great Britain and Ireland, to be applied and the proceeds thereof to be credited to Germany by said Kingdom as therein provided, in payment on account of the obligations of Germany and its nationals to the said Kingdom and its nationals arising out of the said war and otherwise, and Germany duly agreed to compensate its nationals for said property.

16. Certificates of stock in American Corporations other than those described in the bill of complaint herein and which were similarly seized by the Public Trustee have been sold by him. The proceeds of some such sales have been already credited to and accepted by Germany under the provisions of the Treaty of Versailles. In some instances Germany has made payment to its nationals whose certificates of stock in United States Corporations were so seized and sold by the Public Trustee and the proceeds credited to Germany.

17. In and by the terms and provisions of the said Treaty of Versailles and of subdivision 2 of the annex to Article 297 in Section IV of Part X thereof, it was provided as follows:

"No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of such a Power by Germany or by any German National wherever resident in respect of any act or omission with regard to his property, rights, or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission [fol. 79] under or in accordance with the exceptional war measures laws or regulations of any Allied or Associated Power."

18. All of the right, title and interest of the plaintiff in and to the said certificates and the shares represented thereby were duly divested and the same were vested in the defendant, Public Trustee,

as Custodian of Enemy Property on behalf of the United Kingdom of Great Britain and Ireland, and every act or omission complained of by the plaintiff in its bill of complaint herein was done, pursuant to and in accordance with the exceptional war measures, laws and regulations of the said Kingdom.

19. On or about the 25th day of August, 1921, the Governments of the United States and Germany duly entered into and signed at Berlin an international Treaty of Peace known as the "Treaty of Berlin." Ratifications of said Treaty were duly exchanged by the said Governments at Berlin on or about the 11th day of November 1921 and the said Treaty then and there took effect in accordance with its terms.

20. Thereafter and on or about November 14, 1921, the said Treaty was duly proclaimed by the President of the United States and the same thereupon became and it now is a part of the law of the United States.

21. The said Treaty of Berlin was duly published and promulgated by Germany and issued in the collection of Imperial Statutes thereof, and subsequent to the negotiation and signature of the said Treaty and both prior and subsequent to the exchange of ratifications thereof as aforesaid, there were duly enacted in Germany certain national statutes relating thereto. The effect of the publication, promulgation and issuance of the said Treaty as aforesaid and of the enactment of the said statutes under and by virtue of the Laws of Germany was to, and they did, give effect to the said Treaty of Berlin as a German Imperial or National Statute.

22. In and by the terms and provisions of the said Treaty of Berlin [fol. 80] and the Laws of the United States of America, it was and is provided that no claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of said Power, by Germany or by any German National wherever resident, in respect of any act or omission with regard to his property, rights or interests during the said war or in preparation for said war, and that similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power.

23. The plaintiff herein was at all the times mentioned in the said Treaty of Berlin and now is a German National resident in Germany and this action is one brought by said German National against an Allied or Associated Power and nationals thereof within the prohibition of the said Treaty and the laws of the United States.

24. Under and by virtue of the terms and provisions of the said Treaty of Berlin and of the laws of the United States and of the Law of Nations, the terms and provisions of the said Treaty of Versailles creating rights and advantages in the property of German Nationals

for the benefit of the United Kingdom of Great Britain and Ireland, have become and they now are a part of the law of the United States of America.

25. Among the rights in property of German Nationals so created in said Treaty of Versailles for the benefit of the said United Kingdom of Great Britain and Ireland, is the right of ownership of the certificates and shares of stock which are the subject of this suit and of every right, title and interest therein, which ownership was established and vested thereby in the defendant, Public Trustee.

26. At all times since the seizure, capture and taking over of the said certificates and shares and the making of the said vesting order of April 30, 1917, and since the effective date of the said Treaties of Versailles and Berlin and of the Laws of the said United Kingdom of Great Britain and Ireland and of Germany and of the United States as hereinbefore set forth, the said certificates set forth in the bill of complaint herein and the shares represented thereby and every right, title and interest in them or either of them, have belonged and now belong, under and by virtue of the laws of the said United Kingdom of Great Britain and Ireland, of Germany and of the United States, to the said United Kingdom of Great Britain and Ireland, and have been at all of such times and they now are subject to the disposal thereof through the agency of the defendant, Public Trustee, acting as Custodian of Enemy Property as aforesaid, and this plaintiff has been since all of said dates and it now is without any right, title or interest in or to the said certificates or the shares represented thereby, and without right to institute or prosecute this suit, and this Honorable Court has been at all times since the proclamation of the said Treaty of Berlin as hereinbefore set forth and it now is, by reason thereof, without jurisdiction of the subject matter of this suit or of the parties hereto.

Wherefore the defendant, Public Trustee, prays that the bill of complaint herein be dismissed, that this Court determine, adjudge and decree that said defendant, Public Trustee, acting as Custodian of Enemy Property as aforesaid, is the owner of the property which [fol. 82] is the subject of this suit and is entitled to the possession thereof, and that said defendant, Public Trustee, have such other or further decree or relief in the premises as may be just and equitable.

Coudert Brothers, Solicitors for Defendant Public Trustee.
 Frederic R. Coudert, Howard Thayer Kingsbury, Mahlon
 B. Doing, of Counsel.

Office & Post Office Address, No. 2 Rector Street, Borough of Manhattan, City of New York.

[Title omitted]

ANSWER OF DEFENDANTS HERBERT HOPKINS ET AL.

The defendants Herbert Hopkins, individually and as Liquidator of London and Liverpool Bank of Commerce, Limited, Violet Gertrude Fraser as executrix of the will of Thomas Fraser, deceased, English Association of American Bond and Shareholders, Limited, and London and Liverpool Bank of Commerce, Limited, by Coudert Brothers, their solicitors, answer the amended bill of complaint of the above named plaintiff herein as follows:

1. Admit the allegations contained in paragraphs numbered "1," "2," "4" and "5" of the said amended bill of complaint.

2. Admit and allege that this suit arises between citizens and subjects of foreign states and a citizen of a state of the United States, and that the value in controversy to the plaintiff herein exceeds the sum of \$3,000.00 exclusive of interest and costs; and that this suit arises [fol. 84] under and involves the construction of a Treaty of the United States; and that the defendant, Public Trustee, insists that he has title to the shares herein involved by reason, among other things, of the Treaty of Berlin and the Laws of the United States and allege and aver that he has such title; admit that this suit arises under the Constitution of the United States; allege and aver that said Treaty of Berlin defeats plaintiff's title to said shares; deny that plaintiff has any title to said shares; deny that plaintiff has been or is deprived of any property herein involved without due process of law; and deny each and every allegation contained in paragraph numbered "3" of said amended bill of complaint not herein before specifically admitted or denied.

3. Deny the allegations, contained in paragraph numbered "6" of the said amended bill of complaint, that the plaintiff is now the owner of all or any of the shares in said paragraph mentioned. Allege that under and pursuant to the laws of the United Kingdom of Great Britain and Ireland, of Germany, and of the United States, plaintiff has heretofore divested itself and been divested of ownership in and to the said certificates and shares and that such ownership has been duly vested in the defendant, Public Trustee, as Custodian of Enemy Property, on behalf of the United Kingdom of Great Britain and Ireland. Admit that since the outbreak of said War plaintiff has done nothing to diminish its ownership of said shares except as in this Answer set forth.

4. Allege that prior to the seizure hereinafter mentioned the defendant Herbert Hopkins and Thomas Fraser, testator of the defendant Violet Gertrude Fraser, duly endorsed the said certificates in

[fol. 85] blank and delivered the same to the defendant London & Liverpool Bank of Commerce, Limited, and that at all times since said seizure neither the said Herbert Hopkins, Thomas Fraser, Violet Gertrude Fraser, nor any of them has had or now has any right, title or interest in or to the said certificates or the shares represented thereby. Admit that none of said certificates or shares has been demanded or seized by the Alien Property Custodian of the United States. Except as herein admitted, deny each and every allegation contained in paragraph numbered "7" of the said amended bill of complaint.

4. a. Deny the allegation contained in paragraph numbered "3" of the said amended bill of complaint, that the plaintiff has any rights of ownership in the said shares or has suffered any damage in respect thereto. Allege that the plaintiff cannot exercise any rights of ownership in said shares because of the divesting of its ownership in and to the same and the vesting of such ownership in the defendant Public Trustee. Except as thus denied admit the allegations contained in paragraph numbered "8" of the said amended bill of complaint.

Further answering said amended bill of complaint, these defendants further allege as follows:

5. The defendant, Public Trustee, as such, has been since on or before the 27th day of November 1914 and now is duly qualified and acting as Custodian of Enemy Property under and pursuant to certain acts of the Parliament of the United Kingdom of Great Britain and Ireland, known as the Trading with the Enemy Acts, 1914 to 1918.

6. It is, and at the time of the seizure hereinafter mentioned was, the law of said United Kingdom of Great Britain and Ireland that all property belonging to alien enemies was subject to be seized by the defendant Public Trustee and to be vested in him by orders to that effect made by the Board of Trade, a Department of the Government of said Kingdom, or by the High Court of Justice, and that upon such vesting, the defendant Public Trustee became and was entitled to the ownership and possession of such property and the right to transfer the same.

7. The one hundred shares of the common capital stock of the defendant United States Steel Corporation mentioned and described in paragraph numbered "4" of the Bill of Complaint herein were at the outbreak of said War represented by certificates registered in the names of British subjects resident and domiciled in England, and were duly endorsed in blank and physically located at London, England, in the said United Kingdom of Great Britain and Ireland. At the time of the seizure hereinafter mentioned the said one hundred shares were represented by the certificates Nos. H-426,734,43 inclusive, mentioned and described in paragraph numbered "4" of the bill of

complaint herein, registered in the names of the defendant Herbert Hopkins, and Thomas Fraser, testator of the defendant Violet Gertrude Fraser, British subjects, domiciled and resident in England, and were duly endorsed in blank and physically located at London, England. The said one hundred shares and all of the certificates representing the same as aforesaid at all said times, were held for the plaintiff by the defendant, London & Liverpool Bank of Commerce, Limited, a British banking and brokerage house resident of and located in London, England, in an open running account of stock bought and sold and of credits and debits because of such sales and [fol. 87] purchases and other receipts and disbursements and subject to the adjustment of such account. The plaintiff was at the outbreak of said War and at the time of the seizure hereinafter mentioned indebted to the defendant London and Liverpool Bank of Commerce, Limited, in said open running account, which *which* bank, however, held for said plaintiff securities the value of which was largely in excess of such indebtedness. At all of the times hereinbefore in this paragraph mentioned, the defendant London and Liverpool Bank of Commerce, Limited, had a general lien upon the said one hundred shares and the certificates representing the same to insure the unpaid balance due to said defendant upon said account, and said lien was recognized and enforceable under and by virtue of the laws of said United Kingdom of Great Britain and Ireland. Said certificates and the shares represented thereby, and every right, title and interest of the plaintiff in them and either of them, at all said times to and including the time of the seizure hereinafter mentioned, constituted property in the said Kingdom under and by virtue of the laws thereof. The plaintiff Bank für Handel und Industrie was at all times after the outbreak of said War, at the time of the seizure hereinafter mentioned and until the conclusion of peace between said Kingdom and Germany, an alien enemy of the said Kingdom.

8. Said certificates and the shares represented thereby, and all of the right, title and interest of the plaintiff in them and either of them were duly seized, captured and taken over by the defendant Public Trustee acting as Custodian of Enemy Property as aforesaid, on or prior to the 30th day of April 1917, and were duly vested in said Public Trustee by a vesting order duly made by the said High Court of Justice of the United Kingdom of Great Britain and Ireland upon its behalf, on or about said 30th day of April, 1917.

9. By virtue of such seizure, capture and taking over and the entry [fol. 88] of said vesting order, and the laws of said United Kingdom of Great Britain and Ireland, the said defendant Public Trustee became vested with the ownership of said certificates and the shares represented thereby and of every right, title and interest of the plaintiff therein or in either of them, and entitled to dispose of the same. Under and pursuant to the Laws of the said Kingdom the said vesting order had the same effect as though the said certificates and shares, and every right, title and interest of plaintiff in them, or in either of them, had been then and there duly and voluntarily trans-

ferred, conveyed and delivered to the said defendant Public Trustee by the said plaintiff Bank für Handel und Industrie.

10. On or about the 28th day of June, 1919, said United Kingdom of Great Britain and Ireland, and the States Allied and Associated with it in the said War against Germany on the one hand, and Germany on the other, by their duly authorized agents and representatives respectively, entered into and signed an International Treaty of Peace known as the "Treaty of Versailles."

11. Thereafter and prior to the 10th day of January, 1920, the said Treaty of Versailles was duly ratified by the Government of the United Kingdom of Great Britain and Ireland and by the Government of Germany and upon the said 10th day of January 1920 ratifications of said Treaty were duly exchanged by said Governments and the said Treaty by its terms became effective between them.

12. Subsequent to the negotiation and signature of the said Treaty of Versailles, and both prior and subsequent to the exchange of ratifications thereof as aforesaid, the Parliament or the United Kingdom of Great Britain and Ireland duly enacted certain statutes known as the "Treaty of Peace Acts," and the King of said Kingdom duly issued pursuant to such acts certain Orders in Council known as the "Treaty of Peace Orders." The effect of the said statutes and orders under and by virtue of the Laws of the said Kingdom was to, and they did, give to the said Treaty of Versailles and in particular sections [fol. 89] "III," "IV," "V," "VI" and "VII" of Part X thereof, full force and effect as law of said Kingdom as of the date of the taking effect of the said Treaty as aforesaid.

13. The said Treaty of Versailles was duly published and promulgated by Germany and issued in the collection of Imperial Statutes thereof, and subsequent to the negotiation and signature of the said Treaty and both prior and subsequent to the exchange of ratifications thereof as aforesaid, there were duly enacted in Germany certain national statutes relating thereto. The effect of the publication, promulgation and issuance of the said Treaty as aforesaid and of the enactment of the said Statutes under and by virtue of the Laws of Germany was to, and they did, give effect to the said Treaty of Versailles as a German Imperial or National Statute.

14. In and by the terms and provisions of the said Treaty of Versailles, and in particular Part X thereof, the laws of both the United Kingdom of Great Britain and Ireland and of Germany, it was and is provided that as between the said Kingdom or its nationals on the one hand and Germany or its nationals on the other hand, all the exceptional war measures, or measures of transfer, or acts done in execution of such measures by said Kingdom shall be and they are considered as final and binding. Said exceptional war measures, measures of transfer and acts done in execution of such measures as provided in the said Treaty and laws, include all legislative, administrative, or judicial measures of said Kingdom which were taken and which had as an object the seizure of enemy assets in whatsoever form or in whatsoever place, as well as all measures of said Kingdom

directing the devolution of ownership in enemy property upon a person other than enemy owner without his consent, or the cancelling of titles or securities, together with all acts of said Kingdom done in execution of any of such measures, including all orders of Government Departments or Courts applying such measures to enemy property. Said exceptional war measures, measures of transfer and acts [fol. 90] done in execution of such measures include the order, measures and acts wherein and whereby the revocation of the title of plaintiff in and to the certificates and shares set forth in the bill of complaint herein, upon the defendant, Public Trustee, as Custodian of Enemy Property on behalf of said Kingdom, were effected or directed.

In and by the terms and provisions of the said Treaty and laws it was and is further provided that the validity of vesting orders and of any other orders of any Department of the Government or Court of said Kingdom, made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests, including the vesting order of April 30, 1917 hereinbefore mentioned, was and is confirmed; that the interests of all persons, including every right, title and interest of the plaintiff in and to the certificates and shares set forth in the bill of complaint herein, shall be and they are regarded as having been effectively dealt with by any order dealing with property in which they might be interested; that no question should or shall be raised as to the regularity of the transfer of any property, rights or interests dealt with in pursuance of any such order, including the said order dated April 30, 1917 as aforesaid, and that every action taken with regard to any property as regards any matter whatsoever in pursuance of orders of any Department of the Government or Court of said Kingdom made or given, or purporting to be made or given, in pursuance of war legislation thereof with regard to enemy property, rights, or interests, including the said vesting order dated April 30, 1917 above mentioned, was and is confirmed.

15. In and by the terms and provisions of the said Treaty of Versailles [fol. 91] and in particular Part X thereof, and of the legislation of Germany passed pursuant thereto and for the purpose of giving effect to same, and of the Laws of Germany, the Government of Germany duly took over and acquired property of its nationals as therein specified, including every right, title and interest of the plaintiff in and to the certificates and shares set forth in the bill of complaint herein, and duly transferred the said property to the defendant, Public Trustee, as Custodian of Enemy Property on behalf of the United Kingdom of Great Britain and Ireland, to be applied and the proceeds thereof to be credited to Germany by said Kingdom as therein provided, in payment on account of the obligations of Germany and its nationals to the said Kingdom and its nationals arising out of the said war and otherwise, and Germany duly agreed to compensate its nationals for said property.

16. Certificates of stock in American Corporations other than those described in the bill of complaint herein and which were similarly

seized by the Public Trustee have been sold by him. The proceeds of some such sales have been already credited to and accepted by Germany under the provisions of the Treaty of Versailles. In some instances Germany has made payment to its nationals whose certificates of stock in United States Corporations were so seized and sold by the Public Trustee and the proceeds credited to Germany.

17. In and by the terms and provisions of the said Treaty of Versailles and of subdivision 2 of the annex to Article 297 in Section IV of Part X thereof, it was provided as follows:

"No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of such a Power by Germany or by any German National wherever resident in respect of any act or omission with regard to his property, rights, or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in [fol. 92] accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power."

18. All of the right, title and interest of the plaintiff in and to the said certificates and the shares represented thereby were duly divested and the same were vested in the defendant, Public Trustee, as Custodian of Enemy Property on behalf of the United Kingdom of Great Britain and Ireland, and every act or omission complained of by the plaintiff in its bill of complaint herein was done, pursuant to and in accordance with the exceptional war measures, laws and regulations of the said Kingdom.

19. On or about the 25th day of August, 1921, the Governments of the United States and Germany duly entered into and signed at Berlin an international Treaty of Peace known as the "Treaty of Berlin." Ratifications of said Treaty were duly exchanged by the said Governments at Berlin on or about the 11th day of November 1921 and the said Treaty then and there took effect in accordance with its terms.

20. Thereafter and on or about November 14, 1921, the said Treaty was duly proclaimed by the President of the United States and the same thereupon became and it now is a part of the law of the United States.

21. The said Treaty of Berlin was duly published and promulgated by Germany and issued in the collection of Imperial Statutes thereof, and subsequent to the negotiation and signature of the said Treaty and both prior and subsequent to the exchange of ratifications thereof as aforesaid, there were duly enacted in Germany certain national statutes relating thereto. The effect of the publication, promulgation and issuance of the said Treaty as aforesaid and of the enactment of the said statutes under and by virtue of the Laws of

Germany was to, and they did, give effect to the said Treaty of Berlin as a German Imperial or National Statute.

22. In and by the terms and provisions of the said Treaty of Berlin [fol. 93] and the Laws of the United States of America, it was and is provided that no claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of said Power, by Germany or by any German National wherever resident, in respect of any act or omission with regard to his property, rights or interests during the said war or in preparation for said war, and that similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power.

23. The plaintiff herein was at all the times mentioned in the said Treaty of Berlin and now is a German National resident in Germany and this action is one brought by said German National against an Allied or Associated Power and nationals thereof within the prohibition of the said Treaty and the Laws of the United States.

24. Under and by virtue of the terms and provisions of the said Treaty of Berlin and of the Laws of the United States and of the Law of Nations, the terms and provisions of the said Treaty of Versailles creating rights and advantages in the property of German Nationals for the benefit of the United Kingdom of Great Britain and Ireland, have become and they now are a part of the law of the United States of America.

25. Among the rights in property of German Nationals as created in said Treaty of Versailles for the benefit of the said United Kingdom of Great Britain and Ireland, is the right of ownership of the certificates and shares of stock which are the subject of this suit and of every right, title and interest therein, which ownership was established and vested thereby in the defendant, Public Trustee.

26. At all times since the seizure, capture and taking over of the said certificates and shares and the making of the said vesting order of April 30, 1917, and since the effective date of the said Treaties of [fol. 94] Versailles and Berlin and of the Laws of the said United Kingdom of Great Britain and Ireland and of Germany and of the United States as hereinbefore set forth, the said certificates set forth in the bill of complaint herein and the shares represented thereby and every right, title and interest in them, or either of them, have belonged and now belong, under and by virtue of the laws of the said United Kingdom of Great Britain and Ireland, of Germany and of the United States, to the said United Kingdom of Great Britain and Ireland, and have been at all of such times and they now are subject to the disposal thereof through the agency of the defendant, Public Trustee, acting as Custodian of Enemy Property as aforesaid, and this plaintiff has been since all of said dates, and

it now is, without any right, title or interest in or to the said certificates or the shares represented thereby, and without right to institute or prosecute this suit, and this Honorable Court has been at all times since the proclamation of the said Treaty of Berlin as hereinbefore set forth, and it now is, by reason thereof without jurisdiction of the subject matter of this suit or of the parties hereto.

Wherefore the defendants Herbert Hopkins individually and as liquidator of London and Liverpool Bank of Commerce, Limited, Violet Gertrude Fraser, as executrix of the Will of Thomas Fraser, deceased, English Association of American Bond and Shareholders, Limited, and London and Liverpool Bank of Commerce, Limited, pray that the bill of complaint herein be dismissed and that said [fol. 95] defendants have such other or further decree or relief in the premises as may be just and equitable.

Coudert Brothers, Solicitors for Defendants Herbert Hopkins, Individually and as Liquidator of London and Liverpool Bank of Commerce, Limited; Violet Gertrude Fraser, as executrix of the will of Thomas Fraser, deceased; English Association of American Bond and Shareholders, Limited, and London and Liverpool Bank of Commerce, Limited. Frederic R. Coudert, Howard Thayer Kingsbury, Mahlon B. Doing, of Counsel.

Office & Post Office Address: No. 2 Rector Street, Borough of Manhattan, City of New York.

[fol. 96]

IN UNITED STATES DISTRICT COURT

E. 28-340. E. 29-33

[Title omitted]

AGREED STATEMENT OF PROCEEDINGS AND EVIDENCE—Filed September 24, 1924

These two causes came on to be heard together upon the appearance [fol. 97] and pleadings of the respective parties before the Honorable Learned Hand, United States District Judge, at a stated term of the United States District Court for the Southern District of New York on the 1st day of May, 1924.

The parties offered and there were received, as the evidence in the two suits, a joint agreed statement of facts and supplemental agreed statement of facts each dated April 14, 1924, with the exhibits therein specified.

Thereupon the plaintiff in each suit duly moved for a final decree adjudging that the shares of stock of the United States Steel Corporation which are the subject of said suits are vested in and belong in full ownership to the plaintiffs in such suits respectively.

Thereupon the defendant, Public Trustee, duly moved in each suit for a final decree dismissing the bill of complaint therein and adjudging that the certificates and shares of stock of the United States Steel Corporation which are the subject of said suit, are vested in and belong to the said defendant, Public Trustee, in full ownership and requiring the defendant, United States Steel Corporation, to transfer said stock to the defendant Public Trustee upon its books upon presentation of said certificates duly endorsed.

Thereupon the defendant, United States Steel Corporation, duly moved in each suit that the complaint therein be dismissed and that the claim of the defendant, Public Trustee, to the certificates and shares of stock involved therein be dismissed on the ground that, under the Treaty of Berlin and particularly Articles 1 and 2 and subdivision B of Article 297 and subdivision 9 in the annex to Article 298, the United States of America had some right, title or interest in the stock which is the subject of controversy in each of such suits respectively, and that the Court was without jurisdiction to grant relief to either of the claimants to such stock.

[fol. 98] The Court reserved decision upon each and all of the said motions and thereafter on the 6th of June, 1924, rendered its opinion in the said two causes.

Thereafter and on the 20th day of June, 1924, a final decree was entered in each of said causes determining same in accordance with the said opinion of the Court.

Each of the papers and proceedings heretofore enumerated are hereby included herein with the same force and effect as though they and each of them were annexed hereto at length, with the exception of the following named exhibits to the said agreed statement of facts, only the material portions of which, as hereafter set forth, are to be included herein.

Exhibits 1, 1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h, 1i, 1j, 1k, 1l, 1m, 1n, 1o, 1p, 1q, 1r, 1s, to the said agreed statement of facts consist of photostatic copies of each of the twenty certificates of stock of the defendant, United States Steel Corporation, involved in the said two suits. Except as hereinafter noted, each of said exhibits is in the usual form of stock certificate of the defendant, United States Steel Corporation.

Ten of said exhibits, numbered from 1 to 11 inclusive, are identical in form with each other with the exception of the difference in the number of the certificate. Upon the face of each such exhibit appears the following:—

10 Shares

Common Capital Stock

10 Shares.

Number Shares, 10

Incorporated under the Laws of the State of New Jersey

United States Steel Corporation

This is to Certify that Thomas Fraser and Herbert Hopkins is the owner of Ten fully paid and non assessible shares of the par [fol. 99] value of one hundred dollars each, in the Common Capital Stock of United States Steel Corporation transferable only in person or by attorney upon the books of said corporation upon surrender of this certificate. The holders of the preferred stock shall be entitled to receive when and as declared from the surplus or net profits of the corporation, yearly dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by the by laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividends on the common stock shall be paid or set apart; so that, if in any year dividends amounting to seven per cent shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable and the accrued quarterly installments for the current year shall have been declared and the company shall have paid such cumulative dividends for previous years and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the common stock payable then or thereafter, out of any remaining surplus or net profits. In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the Corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares. The preferred stock and the common stock may be increased as provided in the Certificate of Incorporation. This certificate is not valid without the signatures of the Transfer Agent and Registrar of Transfers.

Witness the signatures of the President or of a Vice-President and of the Treasurer or of an Assistant Treasurer of said Corporation.

B. Neilson, Vice-President. J. W. Bloomfield, Asst. Treasurer.

Shares, \$100 each."

On the reverse side of each of said exhibits appears the following printed power of attorney:

[fol. 100] "For value received — hereby sell, assign and transfer unto — — — shares of the Capital Stock represented by the within Certificate and do hereby irrevocably constitute and appoint — — — Attorney to transfer said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated — — —, 19—.

In presence of — — —."

The blank space for the name of the Transferee between the words "unto" and "shares" in said power of attorney is filled in with the name "The English Association of American Bond & Share Holders, Limited," and the blank space for the name of the attorney between the words "appoint" and "attorney" in said power of attorney is filled in as follows: "J. H. P. Reilly & E. F. Briggs and either of them." Both of said blank spaces were filled in by the Public Trustee as aforesaid after the delivery to the Public Trustee, of said certificates, for the purpose of obtaining new certificates in the name of the said English Association of American Bond & Share Holders, Limited, as agent for the Public Trustee. Said power of attorney upon each of said exhibits bears the witnessed signature of "Thomas Fraser" and "Herbert Hopkins," whose names appear on the face thereof, and a date. On the reverse side of each said exhibit appear a number of stamps, differing from each other only in the date therein, reading as follows: "Dividend 16 Dec. 1919 claimed."

The other ten of said exhibits, numbered from 1j to 1s inclusive, are identical in form with each other with the exception of the difference in the number of the certificate. The face of each said exhibit is identical with that of exhibits 1 to 1i above set forth, with the exception of the number of the certificate and the name of the registered owner, which instead of "Herbert Hopkins" and "Thomas Fraser," is "Marks, Bulteel, Mills & Co." On the reverse side of [fol. 101] each said exhibit appears a printed power of attorney identical in form with that appearing upon exhibits 1 to 1(i) as above set forth. The blank space for the name of the transferee between the words "unto" and "shares" in said power of attorney is not filled in. The blank space for the name of the attorney between the words "appoint" and "attorney" in said power of attorney is not filled in. Said power of attorney upon each of said exhibits bears the witnessed signature of "Marks, Bulteel, Mills & Co." whose name appears upon the face thereof, and a date. On the reverse side of each such exhibit appear a number of stamps, differing from each other only in the date therein, reading as follows: "Dividend 16 Dec. 1919 claimed."

Upon the face of each of said exhibits is a British Revenue Stamp, such as is required to be placed upon a bearer certificate upon the

sale thereof, by the provisions of the Finance Act of 1899 of Great Britain.

Exhibit No. 3 to said agreed statement of facts consists of a duly authenticated copy of the vesting order of the Board of Trade of England covering the shares of stock involved in Action No. 28-340 in which the Direction der Disconto Gesellschaft is plaintiff. Material portions of said vesting order are as follows:

“Direction der Disconto-Gesellschaft

Order No. 3

I. In the Matter of the Trading with the Enemy Amendment Act, 1916,

and

II. In the Matter of the Respective Bodies Referred to in the Schedule Hereto as Customers, Respectively, Enemies Within the Act,

and

III. In the Matter of All Persons, Firms, Bodies, and Companies, Being respectively Enemies or Enemy Subjects Within the Act, Having Any Title to or Beneficial Interest in the Scheduled Securities

[fol. 102]

and Scheduled Documents of Title the Subject of this Order,

and

IV. In the Matter of All Persons, Firms, Bodies, and Companies, Being Respectively Enemies or Enemy Subjects Within the Act Who Are Respectively the Registered Holders of any Stocks, Shares, Debentures, or Securities Particularized in the Schedule Hereto and Therein Described as “Registered and Inscribed.”

Whereas (a) the bonds, stocks, shares, debentures, and securities, particulars of which are set forth in the Schedule hereto, are hereinafter referred to as “the Scheduled Securities”; and (b) such of the Scheduled Securities as are in the said Schedule described as “Registered and Inscribed” are hereinafter, when separately mentioned referred to as “the Scheduled Securities Registered and Inscribed”; (c) all other the Scheduled Securities are hereinafter, when separately mentioned, referred to as “the Scheduled Securities to Bearer”; and (d) the actual documents of title being or representing such of the Scheduled Securities as are bearer bonds and securities, and the certificates or scrip or other documents of title for or relating to all other the Scheduled Securities are hereinafter referred to as and included in the expression “the Scheduled Documents of Title”:

And whereas the Customers referred to in the said Schedule are the Head Office of the Direction der Disconto-Gesellschaft, of Berlin

(hereinafter called "the Head Office") and the Branches of the said Direction der Disconto Gesellschaft in Germany and elsewhere (hereinafter called "the Foreign Branches"):

And whereas the Head Office and Foreign Branches are Enemies within the above-mentioned Act:

And whereas the Scheduled Documents of Title are in the possession of and are held by the said Direction der Disconto-Gesellschaft, of 53, Cornhill, E. C. (hereinafter called "the London Agency") for or on behalf of the Head Office or a Foreign Branch as in the said Schedule more particularly appears; but the title to or beneficial interest in the Scheduled Securities and Scheduled Documents of Title may in some instances be vested in the persons, Firms, Bodies, and Companies being respectively Enemies or Enemy Subjects as are referred to in the Third Heading of this Order (all of which aforesaid Persons, Firms, Bodies, and Companies are hereinafter collectively called "the respective Enemies"):

And whereas the Scheduled Documents of Title are not at the unlimited disposal of the London Agency:

And whereas divers of the Scheduled Securities Registered and Inscribed, are (as appears by the said Schedule) registered in the name or names of the Head Office or of the Foreign Branches or [fol. 103] of the London Agency or of a nominee or nominees of the Head Office or of the Foreign Branches or of the London Agency and are in each case held by the respective registered holders thereof for or on behalf of the Head Office or the Foreign Branch for or on behalf of whom the London Agency holds the Scheduled Documents of Title for or relating to the same.

And whereas others of the Scheduled Securities Registered and inscribed are respectively registered in the names of persons who appear to the Board of Trade to be Enemies or Enemy Subjects within the above mentioned Act, and such persons as last aforesaid are hereinafter referred to as "the Enemy Holders":

And whereas (1) the Scheduled Securities to bearer; (2) such of the Scheduled Securities Registered and Inscribed as are registered in the name or names of the Head Office or of the Foreign Branches or of the London Agency or of any nominee or nominees as aforesaid of the Head Office or of the Foreign Branches or of the London Agency; (3) all other the Scheduled Securities Registered and Inscribed which are respectively registered in the name of Enemy Holders; and (4) all the Scheduled Documents of Title are respectively property belonging to or held or managed for or on behalf of Persons, Firms, Bodies and Companies who appear to the Board of Trade to be enemies or Enemy Subjects within the meaning of the above mentioned Act:

And whereas it appears to the Board of Trade to be expedient that such Vesting Order as hereinafter appears should be made in respect of the Scheduled Securities and the Scheduled Documents of Title, and that such powers in regard thereto as are hereinafter contained should be conferred upon the Custodian hereinafter mentioned:

Now, therefore, the Board of Trade in exercise of the powers conferred on them by the Trading with the Enemy Amendment Act 1916, and all other powers enabling them in this behalf do hereby order:

1. That—

(i) all the right, title and interest of the Head Office and Foreign Branches and of the respective Enemies and of the respective Enemy Holders to and in (a) the Scheduled Securities and any interests or dividends accrued and to accrue due thereon respectively; and (b) the Scheduled Documents of Title;

(ii) the right to take possession of, and receive, sue for, or recover the Scheduled Documents of Title;

[fol. 104] (iii) the right to transfer such of the Scheduled Securities Registered and Inscribed as are respectively registered in the name or names of (a) the Head Office; (b) the Foreign Branches; (c) the London Agency; (d) any nominee or nominees of the Head Office or of the Foreign Branches or of the London Agency; or (e) any of the Enemy Holders, and to receive any interests or dividends now due and to accrue due thereon respectively; and

(iv) the right to receive, sue for, or recover all monies which have since the commencement of the present War between the United Kingdom and Germany been received or collected by the London Agency in respect of interests or dividends upon the Scheduled Securities or any of them,

do vest in the Public Trustee, of Kingsway, in the County of London, the Custodian for England and Wales under the Trading with the Enemy Amendment Act, 1914 (hereinafter called "the Custodian").

2. That the Custodian do proceed to obtain delivery over to himself of the Scheduled Documents of Title and to take from time to time such proceedings for the recovery thereof as he may be advised.

3. That the Custodian do proceed to get in all monies which have since the commencement of the said present War been received or collected by the London Agency, as aforesaid, and do take from time to time such proceedings for the recovery thereof as he may be advised.

4. That the Custodian is to be at liberty to transfer such of the Scheduled Securities Registered and Inscribed as are mentioned or referred to in Clause 1 (iii) hereof or any of them into his own name to be held by him as such Custodian.

Provided, nevertheless, that this Vesting Order is not to prejudice (1) any sale by the London Agency of any vested property under any direction given by the Head Office or any Foreign Branch to the London Agency under or by virtue of any permission which may have been or may be accorded in that behalf by the Lords Com-

missioners of His Majesty's Treasury, or (2) the application by the London Agency under any such permission as aforesaid of the proceeds of any vested securities which may have been paid off on maturity or on being drawn for payment, or the proceeds arising from the sale of any vested property by the Custodian or by the London Agency under any such direction and permission as aforesaid, or the income of any such property, or (3) the transfer, delivery, or payment in accordance with any authority in that behalf which may be given by the said Lord Commissioners of His Majesty's Treasury, and upon such terms as the said Lord Commissioners may prescribe, of any vested property, or any income of [fol. 105] vested property to any person who may establish to the satisfaction of the said Lords Commissioners (such satisfaction to be expressed in such manner as the said Lords Commissioners may from time to time direct) that (a) he is either a British subject or the subject of a country which is not an enemy country, and (b) he was at the outbreak of the present war and has ever since been and still is the sole beneficial owner of the property proposed to be transferred or delivered, or of the property the income of which is proposed to be paid (as the case may be) free from any alleged lien or charge on such property or the income thereof in favour of any person.

Dated, this 27th day of March 1918."

On Page 20 of the schedules to the said vesting order are listed the shares involved in the action No. 28-340 in which the Direction der Disconto Gesellschaft is plaintiff, registered in the name of Marks, Bulteel, Mills & Co., bearing certificate numbers H 394,943 to 50 inclusive and H 402081 to 2 inclusive.

Exhibit 3 A to the said agreed statement of facts is a duly authenticated copy of the vesting order of the High Court of Justice of England, Chancery Division, covering the shares of stock involved in suit No. 29-33 in which the Bank für Handel und Industrie is plaintiff. Material portions of the said vesting order are as follows:

"IN THE HIGH COURT OF JUSTICE (Chancery Division), Monday,
the 30th Day of April, 1917

Mr. Justice Younger, at Chambers

Mr. Church, Registrar

In the Matter of the Trading with the Enemy (Amendment) Act, 1914, and in the Matter of BANK FÜR HANDEL UND INDUSTRIE, an Enemy Within the Act.

Upon the application of Lloyds Bank Limited (by originating summons dated 21st July 1916) and upon hearing Counsel for the Applicants and for the Respondents The Public Trustee the Custodian for England and Wales under the above Act and hereinafter called "the Custodian," —.

[fol. 106] And the judge being of opinion that any stocks shares, securities scrip or other property which may be held in the United Kingdom for or on behalf of any branch wheresoever situate of the above named Bank fur Handel und Industrie (hereinafter called "the Enemy Bank" which expression is where the context so requires or admits also to include or mean any such Branch as aforesaid of the Enemy Bank) as well as any monies which may be held by any person firm or corporation within the United Kingdom for or on account of any such branch or be otherwise owing by any such person, firm or corporation to any such branch constitute property belonging to or held or managed for or on behalf of the Enemy Bank within the meaning of the above mentioned Act.

And it appearing by the said affidavits of Herbert Edward Hopkins filed respectively the 16th October 1916 and 7th November 1916 that subject to such lien as is hereinafter mentioned (1) the shares stocks and securities respectively specified in the Fifth Schedule and/or the certificates or scrip therefor are in the possession of the Respondents The London and Liverpool Bank of Commerce Limited, for or on behalf of the Enemy Bank (2) the said respondents held such of the said shares stock and securities as are registered in their names for or on behalf of the Enemy Bank.

And it further appearing by the said affidavits that the Respondents The London and Liverpool Bank of Commerce Limited claim a lien upon all the said shares, stock and securities respectively specified in the said Fifth Schedule and the certificates or scrip therefor for an alleged indebtedness to them of the Enemy Bank as more particularly appearing in the said affidavit of the said Herbert Edward Hopkins filed the 16th October 1916.

And the Respondents The London and Liverpool Bank of Commerce Limited by their counsel submitting to have all questions relating to their said alleged lien determined in these proceedings.

It is ordered that—

(1) All the right, title and interest of the Enemy Bank to and in the shares stocks and securities respectively specified in the Fifth Schedule hereto and any dividends and interest accrued and to accrue due thereon respectively and the proceeds of sale thereof.

And subject to the discharge of the said alleged lien of the respondents The London & Liverpool Bank of Commerce, Limited.

[fol. 107] (2) The right to take possession of and receive, sue for or recover the shares of stocks and securities respectively specified in the said Fifth Schedule and/or the certificates or scrip therefor.

(3) The right to call for a transfer of and to transfer such of the said shares stocks and securities as are registered in the name or names of the Respondents The London and Liverpool Bank of Commerce Limited or any nominee or nominees of the Enemy Bank and to receive any dividends and interest now due and to accrue due thereon.

Do vest in the Custodian.

And it is ordered that the Respondents, the London and Liverpool Bank of Commerce Limited for the purpose of discharging such amount as shall in answer to the enquiry number 1 hereinafter directed be certified to be due to them from the Enemy Bank (hereinafter referred to as the "the certified amount") and under the directions of the Custodian sell and receive the proceeds of sale of all or any of the shares stock and securities respectively specified in the said Fifth Schedule which are either bearer or equivalent to bearer shares stocks or securities or are registered in the names of the Respondents The London and Liverpool Bank of Commerce Limited.

And upon the certified amount being discharged—

It is ordered that the Respondents the London and Liverpool Bank of Commerce Limited forthwith hand over to the Custodian the shares, stock and securities respectively specified in the said Fifth Schedule which shall not have been sold and/or the certificates or scrip therefor.

And it is ordered that the Custodian be at liberty to call for a transfer of and to transfer into his own name all or any of the said last mentioned shares stocks or securities which are registered in the name or names of the Respondents The London and Liverpool Bank of Commerce Limited or any nominee or nominees of the Enemy Bank such shares stock or securities when so transferred to be held by him as such Custodian.

And it is ordered that the Respondents The London and Liverpool Bank of Commerce Limited be at liberty upon the request and at the expense of the Custodian to transfer to him any of the said shares stocks or securities which are registered in the name of the said Respondents."

In the fifth schedule to the said vesting order are listed the shares involved in the Action No. 29-33 in which the Bank für Handel und Industrie² is plaintiff, registered in the names of Herbert Hopkins and Thomas Fraser, bearing certificate numbers II 428734 to 43 inclusive.

[fol. 108] Exhibit 4 to the said agreed statement of facts consists of a copy of the Treaty of Versailles, signed June 28, 1919, which it was and is agreed between the solicitors for the respective parties in the said suits, was and is within the judicial knowledge of the Court and may be referred to and quoted at length by the parties herein with the same force and effect as though the same were here set forth at length.

Exhibit 5 to the said agreed statement of facts consists of a copy of the Treaty of Berlin signed August 25, 1921.

The foregoing agreed statement of proceedings and evidence is approved by the court this 24th day of September 1924.

Wm. Boudy, United States District Judge.

It is hereby stipulated and agreed by and between the solicitors for the respective parties in the above entitled suits that the foregoing is a true and correct statement of the proceedings and evidence in said suits and that the same be approved as such by any Judge

of the United States District Court in and for the Southern District of New York.

Dated September 22nd 1924.

Albert M. Austin, Solicitor for Plaintiff in each suit. Kenneth B. Halstead, Solicitor for Defendant, United States Steel Corporation in each suit. Coudert Brothers, Solicitors for Defendant, Public Trustee and the other defendants in each suit.

[fol. 109]

IN UNITED STATES DISTRICT COURT

Two Suits, Equity Nos. 28-340 and 29-33

[Title omitted]

AGREED STATEMENT OF FACTS AND SUPPLEMENTAL AGREED STATEMENT OF FACTS—Filed April 14, 1924

AGREED STATEMENT OF FACTS

1. The plaintiff in each of the above entitled actions in August 1914, and for many years prior thereto, and at all times since, was and now is a corporation organized and existing under the Laws of Germany. In August, 1914, at the outbreak of the recent war between Germany and Great Britain (hereinafter referred to as "The War"), each of said plaintiffs was engaged in the business of banking, including the buying and selling, safekeeping, carrying and hypothecation of various securities, both for its own account and for the account of customers, including certificates representing shares of the capital stock of the defendant, United States Steel Corporation, a corporation organized and existing under and by virtue of the Laws of the State of New Jersey (hereinafter referred to as "The Steel Corporation").

[fol. 110] 2. A. At the outbreak of the war the plaintiff, Bank für Handel und Industrie, owned one hundred shares of common capital stock of the United States Steel Corporation, represented by certificates registered in the name of British subjects, domiciled and resident in England, and at the time of the seizure hereinafter mentioned represented by certificates Nos. H-426734-43 inclusive, for ten shares each, registered in the name of Thomas Fraser and Herbert Hopkins, British subjects domiciled and resident in England, and the certificates representing said shares of stock at all said times were held for said plaintiff by the London & Liverpool Bank of Commerce, Limited, a British Banking and Brokerage House resident of and located in London, England, in an open running account of stock bought and sold and of credits and debits because of such sales and purchases and other receipts and disbursements, and subject to the adjustment of such account.

B. At the outbreak of the war and at the time of the seizure by the British Public Trustee hereinafter mentioned the plaintiff, Direction der Disconto Gesellschaft, had a branch in London, England, in which branch was held for said plaintiff certificates numbered H-394943 to 50 inclusive and H-402081 and 82 inclusive of the Steel Corporation for ten (10) shares each of its common stock registered on its books in the name of Marks Bulteel Mills & Company; the members of which firm were at all of the times herein mentioned and they now are British subjects, resident and domiciled in England.

3. All of the certificates described in clauses "A" and "B" of the foregoing paragraph were at the outbreak of the war and at the time of the seizure by the British Public Trustee hereinafter mentioned, endorsed in blank, that is, the assignment on the back of each certificate was signed by the stockholder of record, being the same person whose name appeared on the face thereof, and the name of the transferee was left blank.

All of such certificates were also at the outbreak of the war and at the time of the seizure by the British Public Trustee hereinafter mentioned physically located in London, England.

Annexed hereto and marked respectively Exhibits "1," "1a," etc., are photostatic copies of the certificates of stock numbered H-626734-43 inclusive, H-394943-50 inclusive and H-402081 and 82 inclusive referred to in the foregoing paragraph which are hereby made in all respects a part of this stipulation.

4. After the outbreak of the war the following laws were duly enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

The Trading With the Enemy Act 1914, 4 & 5 Geo. 5 c. 87, 18th September 1914.

The Trading With the Enemy Amendment Act, 1914, 5 Geo. 5 c. 12, 27th November 1914.

The Trading With the Enemy Amendment Act, 1915, 5 & 6 Geo. 5 c. 79, 29th July, 1915.

The Trading With the Enemy Amendment Act, 1916 5 & 6 Geo. 5 c. 105, 27th January, 1916.

The Trading With the Enemy (Amendment) Act 1918, 8 & 9 Geo. 5 c. 31, 8th August 1918.

Said Acts are cited together as the Trading With the Enemy Acts, 1914 to 1918, and became a part of the law of Great Britain on the respective dates above set forth.

The following law was also, on the 31st July 1919 duly enacted by the Parliament of the United Kingdom of Great Britain and Ireland, namely,

Treaty of Peace Act, 1919, 9 & 10 Geo. 5 c. 33, and became a part of the law of Great Britain on the said date.

[fol. 112] Pursuant to and by virtue of the Powers contained in the said Treaty of Peace Act, 1919, His Majesty King George the

Fifth by and with the advice of His Privy Council made the following Orders, namely:

The Treaty of Peace Order, 1919, 18th August 1919.

The Treaty of Peace Amendment Order, 1920, 28th June, 1920.

The Treaty of Peace (Amendment) (No. 2) Order 1920, 9th November 1920.

and such orders became a part of the Law of Great Britain on the respective dates above set forth.

Pursuant to Section 5, sub-section 1, of the Trading with the Enemy Amendment Act, 1914, His Majesty King George the Fifth by and with the advice of His Privy Council on the 10th August 1921, made the following order namely:

The Trading with the Enemy (Custodian Direction) Order 1921 and such order became part of the law of Great Britain on the said date.

Copies of all of said acts and orders are hereto annexed marked Exhibits 2, 2a, etc., respectively, and are hereby made in all respects a part of this stipulation.

5. The British Public Trustee was duly appointed to be the Custodian for England and Wales pursuant to the "Trading with the Enemy Amendment Act 1914" and O. R. A. Simpkin is now the Public Trustee and is duly qualified and acting Custodian of enemy property under and pursuant to said Acts.

Under and pursuant to said Acts and Orders or some of them the Board of Trade (or the High Court of Justice) Chancery Division, as the case may prove to be) acting for and on behalf of the British Government, duly made certain vesting orders covering these certificates, Exhibits "1", "1a", etc.

Copies of all of such vesting orders are hereto annexed marked [fol. 113] respectively Exhibits "3", "3a", etc., and are made in all respects a part of this stipulation.

6. Pursuant to the "Trading with the Enemy Acts 1914 to 1918" and said vesting orders and said Treaty of Peace Acts, and said Orders in Council, the defendant Public Trustee physically seized and took possession of and retained all of said certificates. Said seizures all took place after the outbreak of the war and upon the making of the respective vesting orders, and prior to the conclusion of peace between Great Britain and Germany. All such action by said Public Trustee and said other persons within the British Isles was regular and lawful under the Laws of England.

7. The British Public Trustee is still in actual possession of said certificates, or the same are subject to his direction and control.

8. The usual practice in Great Britain at the time of the seizure and at the time of the outbreak of the War, and for many years prior thereto, with respect to certificates of stock in the Steel Corporation including those herein involved, and other American Corporations, was as follows: The stock was registered in the name of bro-

kerage firms or nominees for banks or brokerage firms. These record holders were usually resident in Great Britain but sometimes American names were used. The stockholders of record endorsed the certificates in blank, and the certificates so endorsed were delivered and accepted in fulfillment of sales and purchases of the stock. The dividends were paid to the stockholders of record. The holder of a certificate presented to the brokerage firm who was the record stockholder, or to the bank or the London Branch of the bank, in the case of a bank nominee, the certificate and endorsement itself as proof of his right to the dividends. A "dividend claim" stamp [fol. 114] was placed on the back of the certificate and the dividend was thereupon paid to the holder of the certificate. A small commission or profit was usually realized by the brokerage firm or bank which distributed the dividends among the holders of the certificates. No claims adverse to the rights of these record stockholders to receive payment of the dividends involving any substantial amount of stock, were ever received by the Steel Corporation until claims similar to those which are involved in this litigation were made against the Steel Corporation in behalf of the alleged owners of the stock represented by the certificates. Frequently the ownership of shares passed through many changes covering periods of years without surrender of the certificate itself to the issuing company for transfer. In some instances, however, the Steel Corporation has been requested to transfer shares sold on the London market from one registered Englishman as owner to another Englishman.

In admitting the facts of this paragraph complainant does not admit that they constitute a custom but rather a practice of convenience.

9. The Treaty of Versailles concluding peace between Great Britain and Germany was duly ratified and became effective on 10th January 1920.

A copy of this Treaty is hereto annexed marked exhibit "4" and is hereby made in all respects a part of this stipulation.

The Treaty of Berlin concluding peace between the United States and Germany was duly ratified and became effective on November 11, 1921. A copy of said Treaty is hereto annexed marked Exhibit "5" and is hereby made in all respects a part of this stipulation.

10. Annexed hereto marked Exhibit "6" and hereby made in all [fol. 115] respects a part of this stipulation, is a Schedule of certain of the German Imperial Legislation relevant to this litigation.

11. The certificate of incorporation and the By-Laws of the defendant, United States Steel Corporation, contain the provisions which are now and at the times specified in said corporation's answers were in force and effect all as set forth in the answers of the said defendant, United States Steel Corporation on file herein.

12. All the statutes and decisions enacted or made in the State of New Jersey are deemed to be in evidence herein and any party may refer to them at any time by reference to the official reports in which

the same are found with the same force and effect as though they and each of them were hereto annexed at length.

13. Certificates of stock in American Corporations other than those described in Paragraph 2 hereof, and which were similarly seized by the British Public Trustee have been sold by him. The proceeds of some such sales have been already credited to and accepted by Germany under the provisions of the Treaty of Versailles. In some instances Germany has made payments to its national whose certificates of stock in United States Corporations were so seized and sold by the British Public Trustee and the proceeds credited to Germany.

14. Each of the plaintiffs has demanded of the British Public Trustee that he surrender the Steel Corporation stock certificates herein above described respectively but the British Public Trustee has refused to do so.

15. After the conclusion of peace between the United States and Germany each of the plaintiffs demanded of the Steel Corporation, that it (a) refuse to transfer upon its books the stock represented by any of said certificates which might be presented for transfer by the British Public Trustee, or any agent of his, or any person claiming [fol. 116] to derive title and the right to transfer stock through him and (b) that the Steel Corporation enter the plaintiffs as the owners of record of the shares of stock represented by the said stock certificates respectively. Demand (b) was refused by the Steel Corporation, and as to demand (a) the Steel Corporation has declined to transfer the stock represented thereby to parties who it has reasonable cause to believe were acting as nominees of the British Public Trustee and were not bona fide purchasers for value in good faith of the certificates and the stock represented thereby. The Steel Corporation declined to make such transfers until such time as the respective rights, title and interest in and to the certificates and the stock represented thereby might be established or judicially determined by a court of competent jurisdiction.

16. The plaintiffs claim that any judgment of this court recognizing title in the British Public Trustee to the shares of stock by virtue of his seizure of the certificates or by virtue of the Treaty of Versailles will be in contravention of the provisions of Article V of the Constitution of the United States, in that it would be depriving them of their property without due process of law.

The British Public Trustee claims that by virtue of the Treaty of Berlin, and the Treaty of Versailles and the Statutes and Orders in Council pursuant thereto, title has been confirmed in him.

17. Any party may on the trial submit evidence not inconsistent herewith.

18. The admissions of any fact herein shall not be construed as a waiver by any party of his right to object to the relevancy of such fact to the issues presented in the action.

Nippert & Brown, Counsel for Plaintiffs. Albert M. Austin, Attorney for Plaintiff. Coudert Brothers, Sols. for Defts. Public Trustee et al. Kenneth B. Halstead, Solicitor for Deft. United States Steel Corporation.

Dated April 14, 1924.

SUPPLEMENTAL AGREED STATEMENT OF FACTS

[fol. 117] 1. The plaintiff Bank fur Handel und Industrie was at the outbreak of said War and at the time of the seizure by the British Public Trustee hereinafter mentioned, indebted to the defendant, London & Liverpool Bank of Commerce, Limited, in said open running account, which bank however, held for the said plaintiff securities the value of which was largely in excess of such indebtedness.

2. The Treaty of Versailles and Berlin are and each of them is a part of the law of Germany.

3. Certificates of stock in American Corporations such as those involved herein when endorsed in blank are, under the Laws of England, classified as bearer certificates for purposes of taxation.

4. Attached hereto marked Exhibit "A" is a list of certain decisions of the Courts of England and other countries rendered as therein specified. Any party may refer to the British statutes or decisions list of which is hereto annexed or to any part thereof as found in Official Report thereof with the same force and effect as though the said statute or decision had been hereto annexed at length.

5. Attached hereto marked Exhibit "B" is a list of certain further statutes and orders duly enacted and promulgated by the Parliament and Government of England.

6. Attached hereto marked Exhibits "C," "C-1", etc., are correct translations of sections of certain statutes of Germany.

7. Attached hereto marked Exhibits "D," "D-1," etc., are correct translations of parts of certain decisions of the Courts of Germany as therein specified.

8. All of the statutes and decisions of either England or Germany as hereto and to the principal Statement of Facts annexed, are offered in evidence and shall be received with the same force and effect as though referred to and duly proved in the testimony of an expert on [fol. 118] such foreign law and as evidence of the law of the jurisdiction where enacted or rendered. Such statutes and decisions need

not be further authenticated and no expert need be called to prove such foreign law.

9. Each of the plaintiffs in these suits was at all times during the late war an alien enemy of the United Kingdom of Great Britain and Ireland and each of them was at all times in these suits concerned and it now is a German National resident and domiciled in Germany.

10. On January 23, 1920 the Government of the United Kingdom of Great Britain and Ireland duly notified the Government of Germany, in accordance with the provisions of Section (e) of Article 296 of the Treaty of Versailles, that the provisions of that Article and the Annex thereto should apply as between said Kingdom and Germany, and the provisions of said Article and Annex have been at all times since and they now are applicable between them.

11. The defendant, United States Steel Corporation, has an office in the Borough of Manhattan, City of New York at which certificates of its stock are received for transmission to its office in New Jersey for transfer upon its books.

Nippert & Brown, Counsel for Plaintiffs. Albert M. Austin, Attorney for Plaintiff. Coudert Brothers, Sols. for Defts. Public Trustee et al. Kenneth B. Halstead, Solicitor for Deft. United States Steel Corporation.

[fol. 119] EXHIBIT 2A TO AGREED STATEMENT OF FACTS

Extract from War and Treaty Legislation, 1914-1922, P. 123

The Trading with the Enemy Act, 1914 (4 & 5 Geo. 5, C. 87)

An Act to Make Provisions with Respect to Penalties for Trading with the Enemy and Other Purposes Connected Therewith (18th September, 1914)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) Any person who during the present war trades or has, since the fourth day of August Nineteen Hundred and Fourteen, traded with the enemy within the meaning of this Act shall be guilty of a misdemeanor, and shall—

(a) on conviction under the Summary Jurisdiction Acts, be liable to imprisonment with or without hard labor for a term not exceeding twelve months, or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine;

(b) on conviction on indictment, be liable to penal servitude for a term not exceeding seven or less than three years or to imprisonment with or without hard labor for a term not exceeding two years, or to a fine, or to both such penal servitude or imprisonment and fine;

and the court may in any case order that any goods or money, in respect of which the offence has been committed, be forfeited.

(2) For the purposes of this Act a person shall be deemed to have traded with the enemy if he has entered into any transaction or done any act which was, at the time of such transaction or act, prohibited by or under any proclamation issued by His Majesty dealing with trading with the enemy for the time being in force, or which at common law or by statute constitutes an offence of trading with the enemy.

Providing that any transaction or act permitted by or under any such proclamation shall not be deemed to be trading with the enemy.

(3) Where a company has entered into a transaction or has done any act which is an offence under this section, every director, manager, secretary, or other officer of the company who is knowingly a party to the transaction or act shall be deemed guilty of the offence.

(4) A prosecution for an offence under this section shall not be instituted except by or with the consent of the Attorney-General:

Provided that the person charged with such an offence may be arrested and a warrant for his arrest may be issued and executed, and such person may be remanded in custody or on bail notwithstanding that the consent of the Attorney General to the institution of the prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

[fol. 120] 5. Where an act constitutes an offence both under this Act and under any other Act, or both under this Act and at common law, the offender shall be liable to be prosecuted and punished under either this Act or such other Act, or under this Act or at common law, but shall not be liable to be punished twice for the same offence.

2. (1) If a justice of the peace is satisfied, on information on oath laid on behalf of a Secretary of State or the Board of Trade, that there is a reasonable ground for suspecting that an offence under this Act has been or is about to be committed by any person, firm, or company, he may issue a warrant authorizing any person appointed by a Secretary of State or the Board of Trade and named in the warrant to inspect all books or documents belonging to or under the control of that person, firm, or company, and to require any person able to give any information with respect to the business or trade of that person, firm, or company to give that information, and if accompanied by a constable to enter and search any premises used in connexion with the business or trade, and to seize any such books or documents as aforesaid:

Provided that when it appears to a Secretary of State or the Board of Trade that the case is one of great emergency and that in the interests of the State immediate action is necessary, a Secretary of State or the Board of Trade may, by written order, give to a person appointed by him or them the like authority as may be given by a warrant of a Justice under this subsection.

(2) Where it appears to the Board of Trade—

(a) in the case of a firm, that one of the partners in the firm was immediately before or at any time since the commencement of the present war a subject of, or resident or carrying on business in, a state for the time being at war with His Majesty; or

(b) in the case of a company, that one-third or more of the issued share capital or of the directorate of the company immediately before or at any time since the commencement of the present war was held by or on behalf of or consisted of persons who were subjects of, or resident or carrying on business in, a state for the time being at war with His Majesty; or

(c) in the case of a person, firm, or company, that the person was or is, or the firm or company were or are, acting as agent for any person, firm, or company trading or carrying on business in a state for the time being at war with His Majesty;

the Board of Trade may, if they think it expedient for the purpose of satisfying themselves that the person firm, or company are not trading with the enemy, by written order, give to a person appointed by them, without any warrant from a justice, authority to inspect all books and documents belonging to or under the control of the person, firm or company, and to require any person able to give information with respect to the business or trade of that person, firm, or company, to give that information.

For the purposes of this subsection, any person authorized in that behalf by the Board of Trade may inspect the register of members of a company at any time, and any shares in a company for which share warrants to bearer have been issued shall not be reckoned as part of the issued share capital of the company.

[fol. 121] (3) If any person having the custody of any book or document which a person is authorized to inspect under this section refuses or wilfully neglects to produce it for inspection, or if any person who is able to give any information which may be required to be given under this section refuses or wilfully neglects when required to give that information, that person shall on conviction under the Summary Jurisdiction Acts be liable to imprisonment with or without hard labour for a term not exceeding six months, or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

3. Where it appears to the Board of Trade in reference to any firm or company—

(a) That an offence under this Act has been or is likely to be committed in connexion with the trade or business thereof; or

(b) that the control or management thereof has been or is likely to be so affected by the state of war as to prejudice the effective continuance of its trade or business, and that it is in the public interest that the trade or business shall continue to be carried on;

the Board of Trade may apply to the High Court for the appointment of a controller of the firm or company, and the High Court shall have power to appoint such a controller, for such time and subject to such conditions and with such powers as the Court thinks fit, and the powers so conferred shall be either those of a receiver and manager or those powers subject to such modifications, restrictions or extensions as the court thinks fit (including, if the court considers it necessary or expedient for enabling the controller to borrow money, power, after a special application to the court for that purpose, to create charges on the property of the firm or company in priority to existing charges).

The court shall have power to direct how and by whom the costs of any proceedings under this section, and the remuneration, charges and expenses of the controller, shall be borne, and shall have power, if it thinks fit, to charge such costs, charges, and expenses on the property of the firm or company in such order of priority, in relation to any existing charges thereon, as it thinks fit.

4. (1) This Act may be cited as the Trading with the Enemy Act, 1914.

(2) In this Act the expression "Attorney General" means the Attorney or Solicitor General for England, and as respects Scotland means the Lord Advocate, and as respects Ireland means the Attorney or Solicitor General for Ireland.

(3) In the application of this Act to Scotland, the Secretary for Scotland shall be substituted for a Secretary of State, and the Court of Session shall be substituted for the High Court; the court exercising summary jurisdiction shall be the sheriff court; references to a justice of the peace shall include references to the sheriff and to a burgh magistrate; and references to a receiver and manager shall be construed as references to a judicial factor.

(4) In the application of this Act to Ireland, the Lord Lieutenant shall be substituted for a Secretary of State.

(5) Anything authorized under this act to be done by the Board of [fol. 122] Trade may be done by the President or a Secretary or Assistant Secretary of the Board, or any person authorized in that behalf by the President of the Board.

[fol. 123] EXHIBIT 2B TO AGREED STATEMENT OF FACTS

Extract from War and Treaty Legislation, 1914-1922, p. 127

The Trading with the *Amendment Act*, 1914 (5 Geo. 5, C. 12)

An Act to Amend the Trading with the Enemy Act, 1914, and for Purposes Connected Therewith (27th November, 1914)

Whereas it is expedient to make further provision for preventing the payment of money to persons and bodies of persons resident or carrying on business in any country with which His Majesty is for the time being at war (which persons and bodies of persons are hereinafter referred to as "enemies"), in contravention of the law relating to trading with the enemy, and for preserving with a view to arrangements to be made at the conclusion of peace, such money and certain other property belonging to enemies; and to make other provisions for preventing trading with the enemy;

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) The Board of Trade shall appoint a person to act as Custodian of enemy property (hereinafter referred to as "the Custodian") for England and Wales, for Scotland and for Ireland respectively, for the purpose of receiving, holding preserving, and dealing with such property as may be paid to or vested in him in pursuance of this Act, and if any question arises as to which Custodian any money is to be paid to under this Act, the question shall be determined by the Board of Trade.

(2) The Public Trustee shall be appointed to be the Custodian for England and Wales, and shall, in relation to all property held by him in his capacity of Custodian, have the like status, and his accounts shall be subject to the like audit, as if the same were held by him in his capacity of Public Trustee, and the Public Trustee Act, 1906, shall apply accordingly.

(3) The Custodian for Scotland and Ireland respectively shall have such powers and duties with respect to the property aforesaid as may be prescribed by regulations made by the Board of Trade with the approval of the Treasury.

(4) The Custodian may place on deposit with any bank, or invest in any securities, approved by the Treasury, any moneys paid to him under this Act, or received by him from property vested in him under this Act, and any interest or dividends received on account of such deposits or investments shall be dealt with in such manner as the Treasury may direct.

Provided that the custodian for any part of the United Kingdom shall, if so directed by the Treasury, transfer any money held by him under this Act to the custodian of another part thereof.

2. (1) Any sum which, had a state of war not existed, would have been payable and paid to or for the benefit of an enemy, by way of dividends, interest or share of profits, shall be paid by the person, firm or company by whom it would have been payable to the Custodian to hold subject to the provisions of this Act and any Order in Council made thereunder, and the payment shall be accompanied by such particulars as the Board of Trade may prescribe, or as the Custodian, if so authorized by the Board of Trade, may require.

Any payment required to be made under this subsection to the Custodian shall be made—

[fol. 124] (a) within fourteen days after the passing of this Act, if the sum, had a state of war not existed, would have been paid before the passing of this act; and

(b) in any other case within fourteen days after it would have been paid.

(2) Where *the* before the passing of this Act any such sum has been paid into any account with a bank, or has been paid to any other person in trust for an enemy, the person, firm or company by whom payment was made shall, within fourteen days after the passing of this Act, by notice in writing, require the Bank or person to pay the sum over to the custodian to hold as aforesaid, and shall furnish the custodian with such particulars as aforesaid. The bank or other persons shall, within one week after the receipt of the notice, comply with the requirement and shall be exempt from all liability for having done so.

(3) If any person fails to make or require the making of any payment or to furnish the prescribed particulars within the time mentioned in this section, he shall, on conviction under the Summary Jurisdiction Acts, be liable to a fine not exceeding one hundred pounds or to imprisonment with or without hard labor, for a term not exceeding six months, or to such fine and imprisonment, and in addition to a further fine not exceeding fifty pounds for every day during which the default continues, and every director, manager, secretary or officer of a company or any other person who is knowingly a party to the default shall, on the like conviction, be liable to the like penalty.

(4) If in the case of any person, firm, or company whose books and documents are liable to inspection under subsection (2) of section two of the Trading with the Enemy Act, 1914 (hereinafter referred to as the principal act), any question arises as to the amount which would have been so payable and paid as aforesaid, the question shall be determined by the person who may have been or who may be appointed to inspect the books and documents of the person, firm, or company, or, on appeal, by the Board of Trade and if in the course of determining the question it appears to the inspector of the Board of Trade that the person, firm or company has not distributed as dividends interest or profits the whole of the amount properly available for that purpose, the inspector or Board may ascertain what amount

was so available and require the whole of such amount to be distributed, and, in the case of a company, if such dividends have not been declared, the inspector or the Board may himself or themselves declare the appropriate dividends and every such declaration shall be as effective as a declaration to the like effect duly made in accordance with the constitution of the company:

Provided that where a controller has been appointed under Section three of the principal Act this subsection shall apply as if for references to the inspector there were substituted references to the controller.

(5) For the purpose of this Act the expression "dividends," interest or share of profits" means any dividends, bonus or interest in respect of any shares, stock, debenture, debenture stock or other obligations of any company, any interest in respect of any lien to a firm or person carrying on business for the purposes of that business and any profits or share of profits of such a business, and, where a person is carrying on a business on behalf of an enemy, any sum which, had a state of war not existed, would have been transmissible by a person to [fol. 125] the enemy by way of profits from that business shall be deemed to be a sum which would have been payable and paid to that enemy.

3. (1) Any person who holds or manages for or on behalf of an enemy any property, real or personal (including any rights, whether legal or equitable, in or arising out of property, real or personal), shall, within one month after the passing of this Act or if the property comes into his possession or under his control after the passing of this Act, then within one month after the time when it comes into his possession or under his control, by notice in writing communicate the fact to the Custodian, and shall furnish the Custodian with such particulars in relation thereto as the Custodian may require, and if any person fails to do so he shall, on conviction under the Summary Jurisdiction Acts, be liable to a fine not exceeding one hundred pounds or to imprisonment with or without hard labour, for a term not exceeding six months, or to both such a fine and imprisonment, and in addition to a further fine not exceeding fifty pounds for every day during which the default continues.

(2) Every company incorporated in the United Kingdom and every company which, though not incorporated in the United Kingdom, has a share transfer or share registration office in the United Kingdom shall, within one month after the passing of this Act, by notice in writing communicate to the Custodian full particulars of all shares, stocks, debentures, and debenture stock and other obligations of the company which are held by or for the benefit of an enemy; and every partner of every firm, one or more partners of which on the commencement of the war became enemies or to which money has been lent for the purpose of the business of the firm by a person who so became an enemy, shall, within one month after the commencement of this Act, by notice in writing com-

municate to the Custodian full particulars as to any share of profits and interest due to such enemies or enemy, and, if any company or partner fails to comply with the provisions of this subsection, the company shall, on conviction under the Summary Jurisdiction Acts, be liable to a fine not exceeding one hundred pounds, and in addition to a further fine not exceeding fifty pounds for every day during which the default continues, and the partner and every director, manager, secretary or officer of the company who is knowingly a party to the default shall on the like conviction be liable to the like fine, or to imprisonment, with or without hard labour for a term not exceeding six months, or to both such imprisonment and fine.

4. (1) The High Court or a judge thereof may, on the application of any person who appears to the court to be a creditor of an enemy or entitled to recover damages against an enemy, or to be interested in any property, real or personal (including any rights, whether legal or equitable, in or arising out of property real or personal), belonging to or held or managed for or on behalf of an enemy, or on the application of the Custodian or any Government Department, by order vest in the Custodian any such real or personal property as aforesaid, if the court or the judge is satisfied that such vesting is expedient for the purposes of this Act, and may by the order confer on the Custodian such powers of selling, managing and otherwise dealing with the property as to the court or judge may seem proper.

(2) The court or judge before making any order under this section may direct that such notices (if any), whether by way of advertisement or otherwise, shall be given as the court or judge may think fit.

(3) A vesting order under this section as respects property of any description shall be of the like purport and effect as a vesting order as respects property of the same description made under the Trustee Act, 1893.

(5) (1) The Custodian shall, except so far as the Board of Trade or the High Court or a judge thereof may otherwise direct, and subject to the provisions of the next succeeding subsection, hold any money paid to and any property vested in him under this Act until the termination of the present war, and shall thereafter deal with the same in such manner as His Majesty may by Order in Council direct.

(2) The property held by the Custodian under this Act shall not be liable to be attached or otherwise taken in execution but the Custodian may, if so authorised by an order of the High Court or a judge by whose order any property belonging to an enemy was vested in the Custodian under this Act, or of any court in which judgment has been recovered against an enemy, pay out of the property paid to him in respect of that enemy the whole or any part of any debts due by that enemy and specified in the order:

Provided that before paying any such debt the Custodian shall take into consideration the sufficiency of the property paid to or vested in him in respect of the enemy in question to satisfy that debt and any other claims against that enemy of which notice verified by statutory declaration may have been served upon him.

(3) The receipt of the Custodian or any person duly authorized to sign receipts on his behalf for any sum paid to him under this Act shall be a good discharge to the person paying the same as against the person or body of persons in respect of whom the sum was paid to the Custodian.

(4) The Custodian shall keep a register of all property held by him under this Act, which register shall be open to public inspection at all reasonable times free of charge.

(5) In England and Ireland the Lord Chancellor and the Lord Chancellor for Ireland may by rules, and in Scotland the Court of Session may by act of sederunt make provision for the practice and procedure to be adopted for the purposes of this and the last preceding section.

6. (1) No person shall by virtue of any assignment of any debt or other chose in action, or delivery of any coupon or other security transferable by delivery, or transfer of any other obligation, made or to be made in his favour by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights, or remedies against the person liable to pay, discharge or satisfy the debt, chose in action, security or obligation, unless he proves that the assignment, delivery or transfer was made by leave of the Board of Trade or was made before the commencement of the present war, and any person who knowingly pays, discharges or satisfies any debt, or chose in action, to which this subsection applies, shall be deemed to be guilty of the offence of trading with the enemy within the meaning of the principal Act.

[fol. 127] Provided that this subsection shall not apply where the person to whom the assignment, delivery or transfer was made, or some person deriving title under him, proves that the transfer, delivery or assignment or some subsequent transfer delivery or assignment, was made before the nineteenth day of November, nineteen hundred and fourteen, in good faith and for valuable consideration, nor shall this subsection apply to any bill of exchange or promissory note.

(2) No person shall by virtue of any transfer of a bill of exchange or promissory note made or to be made in his favour by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against any party to the instrument unless he proves that the transfer was made before the commencement of the present war, and any party to the instrument who knowingly discharges the instrument shall be deemed to be guilty of trading with the enemy within the meaning of the principal Act:

Provided that this subsection shall not apply where the transferee, or some subsequent holder of the instrument, proves that the transfer, or some subsequent transfer, of the instrument was made before the nineteenth day of November, nineteen hundred and fourteen, in good faith and for valuable consideration.

(3) Nothing in this section shall be construed as validating any assignment, delivery or transfer which would be invalid apart from this section or as applying to securities within the meaning of section eight of this Act.

7. Where during the continuance of the present war any coupon or other security transferable by delivery is presented for payment to any company, municipal authority or other body or person, and the company, body or person has reason to suspect that it is so presented on behalf or for the benefit of an enemy, or that since the commencement of the present war it has been held by or for the benefit of an enemy, the company, body or person may pay the sum due in respect thereof into the High Court, and the same shall, subject to rules of court, be dealt with according to the orders of the court, and such a payment shall for all purposes be a good discharge to the company, body or person.

8. (1) No transfer made after the passing of this Act by or on behalf of an enemy of any securities shall confer on the transferee any rights or remedies in respect thereof and no company or municipal authority or other body by whom the securities were issued or ~~the~~ managed shall, except as hereinafter appears, take any cognizance of or otherwise act upon any notice of such transfer:

(2) No entry shall hereafter, during the continuance of the present war, be made, in any register or branch register or other book kept in the United Kingdom of any transfer of any securities therein registered, inscribed or standing in the name of an enemy, except by leave of a court of competent jurisdiction or of the Board of Trade.

(3) No share warrants payable to bearer shall be issued during the continuance of the present war in respect of any shares or stock registered in the name of any enemy.

(4) If any company or any contravenes the provisions of this [fol. 128] section the company or body shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding one hundred pounds, and every director, manager, secretary or other officer of the company or body who is knowingly a party to the default shall be liable on the like conviction to a like fine or to imprisonment, with or without hard labour, for a term not exceeding six months.

(5) For the purposes of this section the expression "securities" means any annuities, stocks, shares, debentures, or debenture stock issued by or on behalf of the Government or by any municipal or

other authority, or by any company or by any other body which are registered or inscribed in any register, branch register, or other book kept in the United Kingdom.

9. (1) During the continuance of the present war a certificate of incorporation of a company shall not be given by the Registrar of Joint Stock Companies until there has been filed with them either—

(a) a statutory declaration by a solicitor of the Supreme Court, or, in Scotland, by an enrolled law agent, engaged in the formation of the company, that the company is not formed for the purpose or with the intention of acquiring the whole or any part of the undertaking of a person, firm, or company the books and documents of which are liable to inspection under subsection (2) of section two of the principal Act; or

(b) a license from the Board of Trade authorizing the acquisition by the company of such an undertaking.

(2) Where such a statutory declaration has been filed it shall not be lawful for the company, during the continuance of the present war, without the license of the Board of Trade, to acquire the whole or any part of any such undertaking and if it does so the company shall, without prejudice to any other liability, be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding one hundred pounds, and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall on the like conviction be liable to the like fine or to imprisonment, with or without hard labour, for a term not exceeding six months.

10. (1) Section 1 of the principal Act shall apply to a person who during the present war attempts, or directly or indirectly offers or proposes or agrees, or has since the fourth day of August nineteen hundred and fourteen attempted or directly or indirectly offered or proposed or agreed to trade with the enemy within the meaning of that Act in like manner as it applies to a person who so trades or has so traded.

(2) If any person without lawful authority in anywise aids or abets any other person, whether or not such other person is in the United Kingdom; to enter into, negotiate, or complete any transaction or to do any act which if effected or done in the United Kingdom by such other person, would constitute an offence of trading with the enemy within the meaning of the principal Act, he shall be deemed to be guilty of such an offence.

[fol. 129] (3) If any person without lawful authority deals or attempts, or offers, proposes or agrees, whether directly or indirectly, to deal with any money or security for money or other property which is in his hands or over which he has any claim or control for the purpose of enabling an enemy to obtain money or credit thereon or thereby he shall be deemed to be guilty of the offence

of trading with the enemy within the meaning of the principal Act.

11. (1) In addition to the grounds on which an application can be made to the court by the Board of Trade to appoint a controller under section three of the principal Act, such an application may be made in any case in which the Board think it is expedient in the public interest that a controller should be appointed owing to circumstances or considerations arising out of the present war, and that section shall be construed accordingly.

(2) Section three of the principal Act, as amended by the section, shall extend so as to enable a controller to be appointed of a business carried on by a person in like manner as it applies to the appointment of a controller of a business carried on by a firm.

12. (1) Where, on the report of an inspector appointed to inspect the books and documents of a person, firm or company under section two of the principal Act, it appears to the Board of Trade that it is expedient that the business should be subject to frequent inspection or constant supervision, the Board of Trade may appoint that inspector or some other person to supervise the business with such powers as the Board of Trade may determine, and any remuneration payable and expenses incurred, whether for the original inspection or the subsequent supervision to such amount as may be fixed by the Board of Trade, shall be paid by the said person, firm or company.

(2) Paragraph (c) of subsection (2) of section two of the principal Acts shall have effect and shall be deemed always to have had effect as if for the word "trading" there were substituted the word "resident".

13. Where a person has given any information to a person appointed to inspect the books and documents of a person, firm or company under section two of the principal Act, the information so given may be used in evidence against him in any proceedings relating to offenses of trading with the enemy within the meaning of the principal Act, notwithstanding that he only gave the information on being required so to do by the inspector in pursuance of his powers under the said section.

14. (1) This Act may be cited as the Trading with the Enemy Amendment Act, 1914, and shall be construed as one with the principal act.

(2) No person or body of persons shall, for the purposes of this Act, be treated as an enemy who would not be so treated for the purpose of any proclamation issued by his Majesty dealing with trading with the enemy for the time being in force, and the expression "commencement of the present war" shall mean as respects any enemy the date on which war was declared by His

Majesty on the country in which that enemy resides or carries on business.

[fol. 130] (3) In the application of this Act to Scotland "real property" shall mean "heritable property"; "personal property" shall mean "movable property"; "choses in action" shall mean "right of action"; "attached or otherwise taken in execution" shall mean "arrested in execution or in security, or otherwise affected by diligence"; "assignment" shall mean "assignation"; "judgment has been recovered" shall mean "decree has been obtained"; a reference to a vesting order made under the Trustee Act, 1893, shall be construed as a reference to a warrant to complete a title granted under section twelve of the Trusts (Scotland) Act, 1867, and any money paid into the Court of Session in terms of this Act shall be paid in such manner as may be prescribed by Act of sederunt.

(4) Nothing in this Act shall be construed as limiting the power of His Majesty by proclamation to prohibit any transaction which is not prohibited by this Act, or by license to permit any transaction which is so prohibited.

[fol. 131] EXHIBIT 2E TO AGREED STATEMENT OF FACTS

Extract from War and Treaty Legislation, 1914-1922, p. 139 (5 & 6 Geo. 5, Ch. 79)

An Act to Amend the Trading with the Enemy Acts, 1914

29th July 1915.

Be it enacted by the King's most excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) Section two of the Trading with the Enemy Amendment Act, 1914 (hereinafter referred to as the principal Act), which relates to the payment to the custodian of dividends, interest, and profits payable to or for the benefit of enemies, shall extend to sums which, had a state of war not existed, would have been payable and paid in the United Kingdom to enemies—

(a) In respect of interest on securities issued by or on behalf of the Government or the Government of any of his Majesty's Dominions or any foreign government, or by or on behalf of any corporation or any municipal or other authority whether within or without the United Kingdom; and

(b) By way of payment off of any securities which have become repayable on maturity or by being drawn for payment or otherwise, being such securities as aforesaid or securities issued by any company;

and in the case of such sums as aforesaid (other than sums in respect of the payment off of securities issued by a company) the duty of making payments to the custodian and of requiring payments to be made to him and of furnishing him with particulars shall rest with the person, firm or company through whom the payments in the United Kingdom are made, and the said section shall apply accordingly, and as if for references therein to the date of the passing of the principal Act there were substituted references to the date of the passing of this Act.

(2) Where the custodian is satisfied from returns made to him under section three of the principal Act that any such securities as aforesaid (including securities issued by a company) are held by any person on behalf of an enemy the custodian may give notice thereof to the person, firm or company by or through whom any dividends, interest or bonus in respect of the securities or any sums by way of payment off of the securities are payable, and upon the receipt of such notice any dividends, interest or bonus, payable in respect of, and any sums by way of payment off of the securities to which the notice relates shall be paid to the custodian in like manner as if the securities were held by an enemy.

(3) For the purposes of this section "securities" includes stock, shares, annuities, bonds, debentures or debenture stock or other obligations.

2. (1) Subsection (1) of section three of the principal Act, which requires returns to be made to the custodian of property held or managed for or on behalf of enemies, shall apply to balances and [fol. 132] deposits standing to the credit of enemies at any bank, and to debts to the amount of fifty pounds or upwards, which are due, or which, had a state of war not existed, would have been due, to enemies, as if such bank or debtor were a person who held property on behalf of an enemy, and as if for references to the passing of the principal Act there were substituted references to the passing of this Act.

(2) The duty of making returns under the said subsection as so amended shall extend to companies as if the expressed "person" included company, and if any company fails to comply with the provisions of that subsection as so amended every director, manager, secretary or officer of the company who is knowingly a party to the default shall, on summary conviction, be liable to a fine not exceeding one hundred pounds, or to imprisonment with or without hard labour for a term not exceeding six months, or to both such a fine and imprisonment, and in addition to a further fine not exceeding fifty pounds for every day during which the default continues.

(3) The custodian shall keep a register of all property returns whereof have been made to him under section three of the principal Act as amended by this section, and such register may be inspected by any person who appears to the custodian to be interested as a creditor or otherwise.

3. Sections six, seven, and eight of the principal Act shall apply as if the expression "enemy" where used in those sections, included any person or body of persons who is an enemy or treated as an enemy under any proclamations relating to trading with the enemy for the time being in force.

Provided that the said sections six and eight shall apply as respects persons who were not enemies, nor treated as enemies, under the proclamations in force on the nineteenth day of November nineteen hundred and fourteen, with the substitution of references to the nineteenth day of July nineteen hundred and fifteen for reference to the said nineteenth day of November, and of references to the date of the passing of this Act for references to the date of the passing of the principal Act, and except in cases where a license has been duly granted exempting any particular transaction from the provisions of any of the said sections.

4. No action shall be brought or other proceedings commenced by a company the books and documents of which are liable to inspection under subsection (2) of section two of the Trading with the Enemy Acts, 1914 unless notice in writing has previously been given by the company to the custodian of their intention.

5. This Act may be cited as the Trading with the Enemy Amendment Act 1915, and shall be construed as one with the principal Act: and the Trading with the Enemy Act, 1914, the Trading with the Enemy Amendment Act, 1914, and this Act shall be cited together with the Trading with the Enemy Acts, 1914 and 1915.

[fol. 133] EXHIBIT 2D TO AGREED STATEMENT OF FACTS

Extract from War and Treaty Legislation, 1914-1922, p. 144

Trading with the Enemy Amendment Act, 1916, (5 & 6, Sec. 5, Ch. 105)

An Act to Amend the Trading with the Enemy Acts

(27th January, 1919.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament Assembled, and by the authority of the same, as follows:—

(1) Where it appears to the Board of Trade that the business carried on in the United Kingdom by any person, firm or company is, by reason of the enemy nationality or enemy association of that person, firm or company, or of the members of that firm or company or any of them, or otherwise, carried on wholly or mainly for the benefit of or under the control of enemy subjects, the Board of Trade shall, unless for any special reason it appears to them inexpedient to do so, make an order either—

(a) prohibiting the person, firm, or company from carrying on the business, except for the purposes and subject to the conditions, if any, specified in the order; or

(b) requiring the business to be wound up.

The Board of Trade may at any time revoke or vary any such order, and may, in any case where they have made an order prohibiting or limiting the carrying on of the business at any time, if they think it expedient, substitute for that order an order requiring the business to be wound up.

(2) Where the Board of Trade make any such order they may at the same time or at any time subsequently appoint a controller to control and supervise the carrying out of the order and, if the case requires, to conduct the winding up of the business, and in any case where it appears expedient to the Board of Trade, the Board may, as occasion requires, confer on the controller such powers as are exercisable by a liquidator in a voluntary winding up of a company (including power in the name of the person, firm or company, or in his own name, and by deed or otherwise to, to convey or transfer any property, and power to apply to the High Court or a judge thereof to determine any question arising in the carrying out of the order), or those powers subject to such modifications, restrictions or extensions as the Board think necessary or convenient for the purpose of giving full effect to the order, and the remuneration of and costs, charges and expenses incurred by the controller, and any remuneration payable and costs, charges and expenses incurred in connection with the supervision or inspection of the business, whether before or after the passing of this Act, to such amount as may be approved by the Board, shall be defrayed out of the assets of the business, and shall be charged on such assets in priority to any other charges thereon.

In England and Wales an official receiver may, if the Board of Trade think fit, be appointed controller.

(3) The distribution of any sums or other property resulting from the realization of any assets of the business, whether those [fol. 134] assets are realized as the result of an order requiring the business to be wound up or as the result of an order prohibiting or limiting the carrying on of the business shall be subject to the same rules as to preferential payments as are applicable to the distribution of the assets of a company which is being wound up, and those assets shall, so far as they are available for discharging unsecured debts, be applied in discharging such debts due to creditors who are not enemies in priority to the unsecured debts due to creditors who are enemies; and any balance, after providing for the discharge of liabilities, shall be distributed amongst the persons interested therein in such manner as the Board of Trade may direct:

Provided that any sums or other property which had a state of war not existed would have been payable or transferable under this section to enemies, whether as creditors or otherwise, shall be paid or transferred to the custodian under the Trading with the Enemy

Amendment Act, 1914, to be dealt with by him in like manner as money paid to him under that Act.

(4) Where there are assets of the business in enemy territory the controller shall cause an estimate to be prepared of the value of those assets and also of the liabilities of the business to creditors, whether secured or unsecured, in enemy territory, and of the claims of persons in enemy territory to participate in the distribution of any balance available for distribution, and such liabilities and claims shall, for the purposes of this section, be deemed to have been satisfied out of such assets so far as they are capable of bearing them, and the balance (if any), of such liabilities and claims shall alone rank for payment out of the other assets of the business. A certificate by the controller as to the amount of such assets, liabilities, claims and balances shall be conclusive for the purpose of determining the sums available for discharging the other liabilities and for distribution amongst other persons claiming to be interested in the business:

Provided that nothing in this provision shall affect the rights of creditors of and other persons interested in the business against the assets of the business in enemy territory.

(5) The Board of Trade may, on application for the purpose being made by a controller appointed under this section, after considering the application and any objection which may be made by any person who appears to them to be interested, grant him a release, and an order of the Board releasing the controller shall discharge him from all liability in respect of any act done or default made by him in the exercise and performance of his powers and duties as controller, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(6) If any person contravenes the provisions of any order made under this section he shall be guilty of a misdemeanor punishable [fol. 135] and triable in like manner as the offence of trading with the enemy, and section one of the Trading with the Enemy Act, 1914, shall apply accordingly.

(7) Where an order under this section has been made as respects the business carried on by any person, firm, or company, no bankruptcy petition or petition for sequestration or summary sequestration against such person or firm, or petition for the winding up of such company, shall be presented or resolution for the winding up of such company passed, or steps for the enforcement of the rights of any creditors of the person, firm, or company taken, without the consent of the Board of Trade but the Board of Trade may present a petition for the winding up of the company by the court, and the making of an order under this section shall be a ground on which the company may be wound up by the court.

(8) The Board of Trade shall from time to time prepare and lay before Parliament lists of the persons, firms, and companies as to whom orders have been made under this section, together with short

particulars of such orders and notice of the making of an order under this section prohibiting or limiting the carrying on of any business or requiring any business to be wound up, shall be published in the London, Edinburgh, or Dublin Gazette, as the case may require.

(9) Where a person, being a subject of His Majesty or of any State allied to His Majesty, is detained in enemy territory against his will, that person for the purposes of this section shall not be treated as an enemy or as being in enemy territory.

(10) An order made under this Section shall continue in force notwithstanding the termination of the present war until determined by order of the Board of Trade.

2. Where it appears to the Board of Trade that a contract entered into before or during the war with an enemy or enemy subject or with a person, firm, or company in respect of whose business an order shall have been made under section one of this Act is injurious to the public interest, the Board of Trade may by order cancel or determine such contract either unconditionally or upon such conditions as the Board may think fit, and thereupon such contract shall be deemed to be cancelled or determined accordingly.

3. The power of the Board of Trade to appoint inspectors and supervisors under the Trading with the Enemy Acts, 1914 and 1915, shall include a power to appoint an inspector or supervisor of the business carried on by any person, firm, or company in the United Kingdom for the purpose of ascertaining whether the business is carried on for the benefit of or under the control of enemy subjects, or for the purpose of ascertaining the relations existing, or which before the war existed, between such persons, firm, or company, or of any member of that firm or company, and any such subject; and the Board of Trade may require any inspector, supervisor, or controller appointed under the said Acts or this Act to furnish them with reports on any matters connected with the business.

4. (1) The Board of Trade, in any case where it appears to them to be expedient to do so, may by order vest in the custodian under the Trading with the Enemy Amendment Act, 1914 any property, real or personal (including any rights whether legal or equitable, in or [fol. 136] arising out of property, real or personal) belonging to or held or managed for or on behalf of an enemy or enemy subject, or the right to transfer that property, and may by any such order, or any subsequent order, confer on the custodian such powers of selling, managing and otherwise dealing with the property as to the Board may seem proper.

(2) A vesting order under this section as respects property of any description shall be of the like purport and effect as a vesting order as respects property of the same description made by the High Court under the Trustee Act, 1893, and shall be sufficient to vest in the custodian any property, or the right to transfer any property as pro-

vided by the order, without the necessity of any further conveyance, assurance or document.

(3) Where in exercise of the powers conferred on him by the Board of Trade or by the court under this Act or by virtue of the Trading with the Enemy Amendment Act, 1914, the custodian proposes to sell any shares or stock forming part of the capital of any company or any securities issued by the company in respect of which a vesting order under either of the said enactments has been made, the company may, with the consent of the Board of Trade, purchase the shares, stock, or securities, any law or any regulation of the company to the contrary notwithstanding, and any shares, stock, or securities so purchased may from time to time be re-issued by the company.

(4) The transfer on sale by the custodian of any property shall be conclusive evidence in favour of the purchaser and of the custodian that the requirements of this section have been complied with.

(5) All property vested in the custodian under this section, and the proceeds of the sale of, or money arising from, any such property shall be dealt with by him in like manner as money paid to and property vested in him under the Trading with the Enemy Amendment Act, 1914, and section five of that Act as amended by this Act shall apply accordingly.

5. It shall be the duty of every enemy subject who is within the United Kingdom, if so required by the custodian, within one month after being so required, to furnish the custodian with such particulars as to—

(a) Any stocks, shares, debentures, or other securities issued by any company, government, municipal or other authority held by him or in which he is interested; and

(b) Any other property of the value of fifty pounds or upwards belonging to him or in which he is interested.

as the custodian may require, and if he fails to do so he shall, on conviction under the Summary Jurisdiction Acts, be liable to a fine not exceeding one hundred pounds, or to imprisonment with or without hard labour for a term not exceeding six months, or to both such a fine and imprisonment, and, in addition, to a further fine not exceeding fifty pounds for every day during which the default continues.

6. If the benefit of an application made by or on behalf of an enemy or enemy subject for any patent is, by an order under the [fol. 137] Trading with the Enemy Amendment Act, 1914, or this Act, vested in the custodian, the patent may be granted to the custodian as patentee and may, notwithstanding anything in section twelve of the Patents and Designs Act, 1907, be sealed accordingly by the Comptroller General of Patents, Designs, and Trade Marks, and any patent so granted to the custodian shall be deemed to be properly vested in him by such order as aforesaid.

7. Any restrictions imposed by any Act or Proclamation on dealings with enemy property shall continue to apply to property particulars whereof are or are liable to be notified to the custodian in pursuance of section three of the Trading with the Enemy Amendment Act, 1914, as extended by any subsequent enactment, not only during the continuance of the present war, but thereafter until such time as they may be removed by Order in Council and Orders in Council may be made removing all or any of those restrictions either simultaneously as respects all such property or at different times as respects different classes or items of property.

B (1) Where the custodian executes a transfer of any shares, stock, or securities which he is empowered to transfer by a vesting order made under section four of the Trading with the Enemy Amendment Act, 1914, or under this Act, the company or other body in whose books the shares, stock, or securities are registered shall, upon the receipt of the transfer so executed by the custodian, and upon being required by him so to do, register the shares, stock or securities in the name of the custodian or other transferee, notwithstanding any regulation or stipulation of the company or other body, and notwithstanding that the custodian is not in possession of the certificate, scrip, or other document of title relating to the shares, stock, or securities transferred, but such registration shall be without prejudice to any lien or charge in favour of the company or other body or to any other lien or charge of which the custodian has notice.

(2) If any question arises as to the existence or amount of any lien or charge the question may, on application being made for the purpose, be determined by the High Court or a judge thereof.

9. Where a vesting order has been made under section four of the Trading with the Enemy Amendment Act, 1914, or under this Act as respects any property belonging to or held or managed for or on behalf of a person who appeared to the Court or Board making the order to be an enemy or enemy subject, the order shall not nor shall any proceedings thereunder or in consequence thereof be invalidated or affected by reason only of such person having, prior to the date of the order, died or ceased to be an enemy or enemy subject or subsequently dying or ceasing to be an enemy or enemy subject, or by reason of its being subsequently ascertained that it was not an enemy or an enemy subject, as the case may be.

10 (1) Where on an application for the registration of a company it appears to the Registrar of Joint Stock Companies that any subscriber of the memorandum of association or any proposed director of the company is an enemy subject, he may refuse to register the company.

(2) No allotment or transfer of any share, stock debenture, or other security issued by a company made after the passing of this [fol. 138] Act or for the benefit of an enemy subject, shall, unless

made with the consent of the Board of Trade, confer on the allottee or transferee any rights or remedies in respect thereof, and the company by whom the security was issued shall not take any cognizance of or otherwise act upon any notice of any such transfer except by leave of a court of competent jurisdiction or of the Board of Trade.

If any company contravenes the provisions of this section the company shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding one hundred pounds, and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable on conviction to a fine for like amount or to imprisonment with or without hard labour, for a term not exceeding six months.

(3) Where the right of nominating or appointing a director of a company is vested in any enemy or enemy subject, the right shall not be exercisable except by leave of the Board of Trade, and any director nominated or appointed in exercise of such right shall, except as aforesaid, cease to hold office as director.

11. Where the Board of Trade certify that it appears to them that a company registered in the United Kingdom is carrying on business either directly or through an agent, branch, or subsidiary company outside the United Kingdom, and that in carrying on such business it has entered into or done acts which if entered into or done in the United Kingdom would constitute the offence of trading with the enemy, the Board of Trade may present a petition for the winding-up of the company by the court, and the issue of such a certificate shall be a ground on which the company may be wound up by the court, and the certificate shall, for the purposes of the petition, be evidence of the facts therein stated.

12 In subsection (2) of section five of the Trading with the Enemy Amendment Act 1914, for the words "by whose order any property belonging to an enemy was vested in the custodian under this Act or of any court in which judgment has been recovered against an enemy" there shall be substituted the word "thereof."

13. For removing doubts, it is hereby declared that the custodian under the Trading with the Enemy Acts, 1914 and 1915, has and shall be deemed always to have had power to charge such fees in respect of his duties under that Act and this Act, whether by way of percentage or otherwise as the Treasury may fix, and such fees shall be collected and accounted for by such persons in such manner and shall be paid to such account as the Treasury direct, and the incidence of the fees as between capital and income shall be determined by the custodian.

14. All things required or authorized under the Trading with the Enemy Acts, 1914 and 1915, or this Act to be done by, to, or before the President or a Secretary or an Assistant Secretary of the Board of Trade, or any person authorized in that behalf by the President of the Board of Trade.

[fol. 139] 15. In this Act the expression "enemy subject" means a subject of a State for the time being at war with His Majesty, and includes a body corporate constituted according to the laws of such a State.

16. This Act may be cited as the Trading with the Enemy Amendment Act, 1916, and shall be construed as one with the Trading with the Enemy Acts, 1914 and 1915, and those Acts and this Act may be cited together as the Trading with the Enemy Acts, 1914 to 1916.

[fol. 140] EXHIBIT 2E TO AGREED STATEMENT OF FACTS

Extract from War and Treaty Legislation, 1914-1922, p. 154

Trading with the Enemy (Amendment) Act, 1918 (8 & 9 Geo. 5, Ch. 31)

An act to amend the enactments relating to trading with the enemy and to extend temporarily certain of those enactments to the carrying on of banking business after the termination of the present war.

(8th August, 1918.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In any case where the Board of Trade have before the passing of this Act made, or hereafter make, an order under the Trading with the Enemy Amendment Act, 1916 (in this Act referred to as the principal Act), requiring the business of a company to be wound up, the Board may make an order requiring the company to be wound up and appointing a liquidator to conduct the winding-up; and on the making of such an order the company shall be wound up as if it had on the date of the order passed a special resolution for voluntary winding-up and had appointed as liquidator the person named as liquidator in the order; and the provisions of the Companies (Consolidation) Act, 1908, shall apply accordingly subject to the modifications set forth in the Schedule to this Act.

2. (1) During the period of five years immediately after the termination of the present war and thereafter until Parliament otherwise determine no banking business shall be carried on within the United Kingdom—

(a) by a company which is an enemy-controlled corporation within the meaning of this Act; or

(b) by a firm or individual, if the business carried on is one with respect to which, if a state of war still continued, an order for the winding-up thereof could have been made under section one of the principal Act;

and if any person is concerned in carrying on any such business in contravention of this provision he shall be guilty of a misdemeanor punishable in like manner and subject to the like provisions as in the case of a misdemeanor under section one of the Trading with the Enemy Act, 1914, and that section shall apply accordingly.

(2) Where it appears to the Board of Trade that any banking business is carried on in contravention of this section the Board of Trade shall order the business to be wound up, and for that purpose the provisions of section one of the principal Act and the provisions of this Act which relates to orders made under that section shall with the necessary adaptations apply.

(3) The power of the Board of Trade to appoint inspectors under the Trading with the Enemy Acts, 1914 to 1916, shall include the [fol. 141] power to appoint inspectors for the purpose of ascertaining, during the period aforesaid, whether any banking business is carried on by a company which is an enemy controlled corporation or for the benefit of, or under the control of, subjects of an enemy state, and the provisions of those Acts relating to inspection shall apply accordingly.

(4) The Board of Trade may, after consultation with the Treasury, make rules defining what business is for the purpose of this section, to be deemed banking business:

Provided that any rules so made shall be laid before each House of Parliament as soon as may be after they are made, and if an address is presented to His Majesty by either House of Parliament within the next twenty days on which the House has sat, after any such rule is laid before them, praying that the rule may be annulled, His Majesty in Council may annul the rule and it shall thenceforth be void, without prejudice, however, to the making of any new rule.

3. (1) Where a partnership has been dissolved by reason of one or more of the partners having been resident or having carried on business in an enemy country; and the partnership business had before the dissolution of the partnership been carried on wholly or mainly for the benefit of, or under the control of, persons who have become enemy subjects, it shall be lawful for the Board of Trade to make an order for the winding up of the business carried on by any successors of the firm, on any case where it appears to them that the former association of those successors with persons who subsequently became enemies or enemy subjects makes it expedient to do so.

Provided that where such an order has been made and any sum has been paid to the custodian as representing the share of any such partner, the court may, on the application of the Board of Trade, order the custodian to pay to the controller appointed under the order the whole or any part of that sum to be dealt with by him as part of the assets of the firm.

(2) Where it appears to the Board of Trade that any club or other undertaking, not being a business, carried on in the United Kingdom

by any person or body of persons incorporated or unincorporated, is or was at any time since the outbreak of war, by reason of the enemy nationality or association of the members of that body, or any of them, or otherwise, carried on wholly or mainly for the benefit of, or under the control of, enemy subjects, the Board of Trade may and shall be deemed always to have had power to make an order requiring the undertaking to be wound up.

(3) Where any person, firm, or company has ceased to carry on business, and it appears to the Board of Trade that the business whilst carried on was by reason of the enemy nationality or enemy association of that person, firm, or company, or of the members of that firm or company, or otherwise, carried on wholly or mainly for the benefit of or under the control of, enemy subjects, or persons who subsequently became enemy subjects, the Board of Trade may and shall be deemed always to have had power to make an order for the realization and distribution of the assets of the business.

(4) The provisions of section one of the principal Act and of section one of this Act and the other provisions of this Act which relate to orders made under section one of the principal Act shall, with the necessary adaptations, apply as respects orders made under this section in like manner as they apply as respects orders made under subsection (1) of section one of the principal Act.

[fol. 142] 4. (1) On or at any time after the release of a controller appointed under the principal Act or a liquidator appointed by the Board of Trade to conduct a winding up under section one of this Act notice thereof may be given by the Board of Trade to the Registrar of Companies, and on the receipt of such notice the registrar shall forthwith register it, and may if so directed by the Board of Trade strike the name of the company off the register and the company shall be dissolved.

(2) Where a company has been dissolved by virtue of this section, or where a company in respect to which an order has been made under section one of the principal Act has been removed from the register under section two hundred and forty two of the Companies (Consolidation) Act, 1908, no application for an order declaring the dissolution void or restoring the company to the register shall be made without the consent of the Board of Trade, and the Registrar of Companies may refuse to register any company with a name the same as or similar to that of the company so dissolved.

(3) In England, on the release of a liquidator appointed as aforesaid, the official receiver attached to the High Court discharging the duties of official receiver under the Companies (Consolidation) Act, 1908, shall ex officio become liquidator, and the right to recover any debts due to the company at the date of the release, and the right to recover any property of the company which may then remain outstanding, shall vest in the said official receiver, and he may take proceedings in his official name for the recovery of such debts and property, notwithstanding the dissolution of the company; and

any sums or property recovered by him after the dissolution shall be dealt with in such manner as the Board of Trade may direct.

5. Where the Court in pursuance of subsection (7) of section one of the principal Act makes, or has before the passing of this Act made, an order for the winding up of a company with respect to which an order has, whether before or after the passing of this Act, been made by the Board of Trade under subsection (1) of that section—

(a) The Court may by the winding-up order or any subsequent order to dispense with compliance with the provisions of section one hundred and forty-seven of the Companies (Consolidation) Act, 1908 (which relates to the statement of the company's affairs), and of section one hundred and fifty-two of that Act which relates to meetings of creditors and contributories, or of either of those sections;

(b) notwithstanding anything in the Companies (Consolidation) Act 1908, in a winding-up in England the official receiver shall, unless and until some other person is appointed by the court, be the liquidator of the company, but the Court may upon the application of the Board of Trade, from time to time appoint any other person to be liquidator, notwithstanding that a meeting of creditors and contributories has not been held, and may, upon the like application, remove any person so appointed;

(c) the provisions of subsection (3) of section one of the principal [fol. 143] Act, giving priority to unsecured creditors who are not enemies, and as to the payment and transfer of enemy property to the custodian and the manner in which such property is to be dealt with by him, and the provisions of subsection (4) of the same section, which relates to the allocation of property in enemy territory to the satisfaction of liabilities to and claims of persons in enemy territory, shall with the necessary adaptations apply to the winding up of the company;

(d) the assets of the company may be distributed without making any provisions for claims by enemies except those which are disclosed in the books of the company or of which the liquidator has otherwise received notice, and as respects claims by enemies of which note has been so received the liquidator may pay to the custodian the dividends on any such claim without requiring a proof to be lodged in respect thereof.

6. Where before the passing of this Act any balance of the sums or other property resulting from the realization of any assets of a business ordered to be wound up by an order under the principal Act, being a business carried on by a company, have in pursuance of directions of the Board of Trade been distributed amongst members of the company as being persons interested in such balance, such distribution shall be deemed to have been lawful and within the powers conferred by the principal Act.

7. (1) Where, whether before or after the passing of this Act, an order has been made under section one of the principal Act requiring a business to be wound up, or an order under section one of this Act has been made for the winding up of a company, any claim against or in respect of the assets of the business, or as the case may be, any claim against the company, may be dealt with by the High Court or a judge thereof upon a summary application made either by the controller or liquidator, as the case may be, or with the consent of the Board of Trade by the claimant; Provided that notice of the application if made by the controller or liquidator shall be served on the claimant, and if made by the claimant shall be served on the controller or liquidator, as the case may be.

(2) Where any such order has been made any action or other legal proceedings against the person, firm, or company whose business is being wound up, or, as the case may be, against the company which is being wound up, may, on the application of the controller or liquidator, be stayed by the court in which the proceedings are pending.

8. The Board of Trade, in any case where it appears to them expedient, may by order vest in the custodian any patent or design belonging to a company with respect to which an order has been made under section one of the principal Act or section three of this Act, or any property belonging to a company which is an enemy controlled corporation within the meaning of this Act; and sections four and nine of the principal Act shall apply in the case of property vested in the custodian under this section in like manner as it applies to property vested in him under the said section four.

[fol. 144] 9. (1) For removing doubts it is hereby declared that the power of the court under section four of the Trading with the Enemy Amendment Act, 1914, and of the Board of Trade under section four of the principal Act of making orders vesting property in the custodian extends, and shall be deemed always to have extended, so as to enable such orders to be made vesting any property in the custodian of any part of the United Kingdom, notwithstanding that the property is situate in another part of the United Kingdom.

(2) Where any property has, either before or after the passing of this Act, by order of the court or the Board of Trade been vested in the custodian for any part of the United Kingdom, it shall be lawful for the Court or Board of Trade, as the case may be—

(a) to order the transfer of the property to the custodian of another part of the United Kingdom;

(b) to order the payment to the custodian of another part of the United Kingdom of the dividends or other income which has arisen, or may thereafter arise, from any such property.

10. Where the Board of Trade is desirous of obtaining information as to the character of a business which is being carried on in

this country and ascertaining whether such business is one to which the principal Act or this Act applies, the High Court or a judge thereof may, upon a summary application by the Board, make an order directing any person to appear as a witness before the Board or any advisory committee appointed by the Board and to give evidence on oath before the Board of such advisory committee and to produce any documents which the High Court or the Judge may think proper.

11. Where a business carried on in the United Kingdom which in the opinion of the Board of Trade, could at any time have been wound up under the provisions of the Principal Act or of this Act if it had not been transferred is being carried on by any person, firm, or company other than that by whom it was carried on at the commencement of the war, the Board may, if they think fit, require evidence that the transfer, if any, of the business was made bona fide and for valuable consideration, and that the person, firm, or company by whom the business is carried on is not carrying on the business on behalf of or for the benefit of enemy subjects, or in any way under enemy control, and if they are not satisfied by such evidence the Board may make an order requiring the business to be wound up as though it were a business to which section one of the principal Act applies.

12. (1) Where, whether before or after the passing of this Act, an order has been made either by the court of by the Board of Trade under the Trading with the Enemy Acts, 1914 to 1916, vesting any property in the custodian, and any person claims a lien or charge thereon, the High Court or a judge thereof may, upon a summary application being made for the purpose, and either with or without the consent of the claimant, direct such account and inquiries as may be necessary for the purpose of determining the extent or amount of such lien or charge, and may order a sale of the property free from such lien or charge, and the payment of any moneys arising from such sale or otherwise in respect of the property in or [fol. 145] towards discharge of the amount of lien or charge.

(2) Any such application shall be served on such parties as the Court or Judge may direct, and may in any case be made either by the claimant or by the custodian or any Government Department, and also if the property, subject to the lien or charge, is property belonging to an enemy by any person who may appear to the Court to be interested, including a person having under competent authority the control or supervision of any business of whose assets the lien or charge forms part.

(3) Where any property to which section four of the Trading with the Enemy Amendment Act, 1914, applies is subject to a lien or charge, an application under that section for an order vesting the property in the custodian may be made by any person by whom an application under the foregoing provisions of this section may be made.

13. In this Act—

The expression "enemy controlled corporation" means any corporation—

(a) where the majority of the directors or the persons occupying the position of directors, by whatever name called, are subjects of an enemy state; or

(b) where it appears to the Board of Trade that the majority of the voting power or shares is in the hands of persons who are subjects of an enemy state, or who exercise their voting powers or hold the shares directly or indirectly on behalf of persons who are subjects of an enemy state; or

(c) where the control is by any means whatever in the hands of persons who are subjects of an enemy state; or

(d) where the executive is an enemy controlled corporation or where the majority of the executive are appointed by an enemy controlled corporation:

The expression "enemy state" means a state with which His Majesty is now at war.

14. This Act may be cited as the Trading with the Enemy (Amendment) Act 1918, and shall be construed as one with the Trading with the Enemy Acts, 1914 to 1916, and those Acts and this Act may be cited together as the Trading with the Enemy Acts, 1914 to 1918.

[fol. 146] EXHIBIT 2 F TO AGREED STATEMENT OF FACTS

Treaty of Peace Orders (Consolidated)

The Treaty of Peace Orders, 1919 to 1921 (i. e., the Treaty of Peace, 1919, as amended by the Treaty of Peace Amendment Order, 1920; the Treaty of Peace (Amendment) (No. 2) Order, 1920; the Treaty of Peace (Amendment) Order, 1921, and the Treaty of Peace (Amendment) (No. 2) Order, 1921)

Present: The King's Most Excellent Majesty in Council.

Whereas at Versailles on the Twenty-eighth day of June, nineteen hundred and nineteen, a Treaty of Peace (hereinafter referred to as "the Treaty") was signed on behalf of His Majesty:

And whereas by the Treaty of Peace Act, 1919, it was provided that His Majesty might make such appointments, establish such offices, make such Orders in Council and do such things as appeared to him to be necessary for carrying out the Treaty, and for giving effect to any of the provisions of the Treaty, and that any Order in Council made under that Act might provide for the imposition by summary process or otherwise of penalties in respect of breaches of the provisions thereof:

And whereas the Treaty contained the Sections set out in the Schedule to this Order, and it is expedient that for giving effect to those Sections the provisions hereinafter contained should have effect:

And whereas by Treaty grant usage sufferance or other lawful means His Majesty has power and jurisdiction in British Protectorates, and is pleased by virtue and in exercise of the powers vested in Him by the Foreign Jurisdiction Act, 1890, or otherwise to extend the provisions of this Order to such Protectorates:

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows:

1. The Sections of the Treaty set out in the Schedule to this Order shall have full force and effect as law, and for the purpose [fol. 147] of carrying out the said Sections the following provisions shall have effect:

(i) There shall be established in the United Kingdom a Clearing Office under the control and management of such person (hereinafter referred to as the Controller) as the Board of Trade may appoint for the purpose, and there shall be attached thereto such officers and servants as the Board of Trade, subject to the consent of the Treasury as to number, may determine, and there shall be paid to the Controller and to such Officers and servants such salaries or other remuneration as the Treasury may determine.

In the event of a local office being established in any part of His Majesty's dominions outside the United Kingdom or in any Protectorate the provisions relating to the Clearing Office hereinafter contained shall apply thereto for the purpose of the functions authorized to be performed by a local Clearing Office under paragraph 1 of the Annex to Section III of Part X of the Treaty.

(ii) It shall not be lawful for any person to pay or accept payment of any enemy debt except in cases where recovery thereof in a court of law is allowed as hereinafter provided, otherwise than through the Clearing Office and no person interested in any such debt as debtor or creditor shall have any communications with any other person interested therein as creditor or debtor except through or by leave of the Clearing Office, and if any person contravenes this provision he shall be guilty of an offence and liable to be proceeded against and punished as if he had been guilty of the offence of trading with the enemy, and section one of the Trading with the Enemy Act, 1914, shall apply accordingly.

(iii) It shall not be lawful for any person to take proceedings in any court for the recovery of any enemy debt except in the circumstances provided under paragraphs 16, 23, and 25 of the Annex to the said Section III.

(iv) The Clearing Office shall have power to enforce the payment of any enemy debt against the person by whom the debt is due, together with such interest as is payable under paragraph 22 of

the Annex to the said Section III, and for that purpose shall have all such rights and powers as if they were the creditor; and if the debt has been admitted by the debtor or the debt or amount thereof has been found by arbitration or by the Mixed Arbitral Tribunal or by a court of law in manner provided by paragraph 16 of the Annex to the said Section III, the Clearing Office may certify the amount so admitted or found due, together with such interest as aforesaid, and on production to the proper officer of the Supreme Court of the part of His Majesty's Dominions or the Protectorate in which the debtor resides of such certificate, the certificate shall be registered by that officer and shall from the date of such registration be of the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in that court for the recovery of a debt of the amount specified in the certificate and entered upon the date of such registration, and all reasonable [fol. 148] costs and charges attendant upon the registration of such certificate shall be recoverable in like manner as if they were part of such judgment.

(v) It shall be lawful for the Clearing Office to recover from any person by whom a fine is payable under paragraph 10 of the Annex to the said Section III the amount of such fine.

(vi) It shall be lawful for the Clearing Office to deduct from any sum payable by the Clearing Office to a creditor or any other person such commission, not exceeding two and a half per cent. of the amount payable, as may be fixed by the Clearing Office.

(vii) If any creditor refuses or fails to give such notice or to furnish such documents or information as are mentioned in paragraph 5 of the Annex to the said Section III he shall, on summary conviction, be liable to a fine not exceeding ten pounds, and where, under the provisions contained in the said Annex, the creditor has notified an enemy debt as due to him and the debt so notified has been admitted or found due to that creditor under the said provisions, payment by the Clearing Office of the sum credited to it in respect of that debt shall be made only to the creditor by or on whose behalf the debt was not notified, except that in the event of the death, bankruptcy, liquidation, or lunacy of the said creditor, payment by the Clearing Office shall be made to the person entitled by law to stand in his place.

(viii) If any person collusively gives notice of or admits any debt which is not due, or furnishes any false information with respect to any debt, he shall, on summary conviction, be liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both such imprisonment and fine.

(ix) If His Majesty so agrees with any of the other Allied or Associated Powers the provisions of this Order, so far as they relate to enemy debts, shall apply to debts due to or from the nations of that Power resident in any part of His Majesty's Dominions or

Protectorates in like manner as they apply to debts due to or from British nationals so resident.

(x) Proceedings by and on behalf of the Clearing Office may be taken by and in the name of the Controller of the Clearing Office, who may *be* that name sue and be sued, and costs may be awarded to or against the Controller. The Clearing Office may make rules, subject to the approval of the President of the Board of Trade for prescribing the manner in which the powers and duties conferred upon the Clearing office by this Order shall be exercised.

(xi) Every document purporting to be an order or other instrument issued by the Clearing Office and to be signed by the Controller shall be received in evidence and shall be deemed to be such order or instrument without further proof unless the contrary is shown. In any proceeding by the Clearing Office to enforce payment of a debt or fine, a report purporting to be signed by the Controller or by the secretary shall be evidence of the facts therein stated.

(xii) A certificate signed by the Controller that an order or other instrument purporting to be made or issued by the Clearing Office is so made or issued shall be conclusive evidence of the facts so certified.

(xiii) The Documentary Evidence Act, 1868, as amended by any subsequent enactment, shall apply to the Clearing Office in like manner as if the Clearing Office were mentioned in the first column of the First Schedule to that Act, and as if the Controller or Secretary of the Clearing Office, or any person authorized by the Controller to act on his behalf were mentioned in the second column of that Schedule, and as if the regulations referred to in that Act included any documents issued by or on behalf of the Clearing Office.

(xiv) All decisions of the Mixed Arbitral Tribunal constituted under Section VI of Part X of the Treaty, if within the jurisdiction of that tribunal, shall be final and conclusive and binding on all courts.

(xiv a) The Clearing Office may undertake on behalf of a British national the presentation to and conduct before the Mixed Arbitral Tribunal of any claim, difference or dispute referable to the Tribunal under the provisions of Sections IV, V and VII of Part X of the Treaty, and may make regulations with the consent of the Treasury in respect to the fees to be charged in respect of such services.

(xv) For the purpose of enforcing the attendance of witnesses before the Mixed Arbitral Tribunal, wherever sitting whether within or without His Majesty's Dominions, and compelling the production before the tribunal of documents, a Secretary of State shall have power to issue orders which shall have the like effect as if the proceedings before the tribunal were an action in a court and the order

were a formal process issued by that court in the due exercise of its jurisdiction, and shall be enforceable by that court accordingly, and disobedience to any such order shall be punishable as contempt of court.

(xvi) All property, rights and interest within His Majesty's Dominions or Protectorates belonging to German nationals at the date when the Treaty comes into force (not being property rights or interests acquired under any general license issued by or on behalf of His Majesty), and the net proceeds of their sale, liquidation or other dealings therewith, are hereby charged—

(a) In the first place, with payment of the amounts due in respect of claims by British nationals with regard to their property, rights and interest, including companies and associations in which they are interested in German territory, or debts owing to them by German nationals, and with payment of any compensation awarded by the Mixed Arbitral Tribunal, or by an arbitrator appointed by that Tribunal in pursuance of paragraph (e) of Article 297, and with payment of claims growing out of acts committed by the German Government or by German authorities since the thirty-first day of July, and before the fourth day of August, nineteen hundred and fourteen, but so nevertheless that the claims of British nationals for the proceeds of the liquidation of their property, rights and interests mentioned in Section IV of Part X of the Treaty and in the Annex thereto, and for the enemy debts owing to them referred to in [fol. 150] Article 296 of the Treaty, shall rank in priority to any of the other claims above mentioned.

(b) Secondly, with payment of the amounts due in respect of claims by British nationals with regard to their property, rights and interests in the territories of Austria-Hungary, Bulgaria and Turkey, insofar as those claims are not otherwise satisfied.

Provided that any particular property, rights or interests so charged may at any time, be released by the Custodian acting under the general direction of the Board of Trade from the charge so created.

(xvii) With a view to making effective and enforcing such charge as aforesaid—

(a) no person shall, without the consent of the Custodian, acting under the general direction of the Board of Trade, transfer, part with or otherwise deal in any property, right or interest subject to the charge, and if he does so he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such imprisonment and fine:

(aa) The Court may on the application of the Clearing Office of the Custodian require any person known or suspected to have in his possession or under his control or management any property, right or interest subject to the charge, including any person known or suspected to owe a debt to a German national, or any person

whom the Court may consider capable of giving information respecting the same, subject to payment or tender of reasonable expenses of his attendance, to attend as a witness and to give evidence or produce documents before the Court or before such officer as the Court may appoint for the purpose of examining into the matter who shall have power to take evidence and administer oaths, and if any person fails without reasonable excuse to comply with any of the provisions of the order, or wilfully gives false evidence, he shall, on summary conviction, be liable to a fine not exceeding one hundred pounds, or to imprisonment for a term not exceeding three months, or to both such imprisonment and fine.

For the purposes of this paragraph "the court" means the High Court or a judge thereof, or the County Court, or in Scotland the Court of Session or the sheriff court.

(b) every person owning or having the control or management of any property right or interest subject to a charge (including where the property right or interest consists of shares, stocks or other securities issued by a company municipal authority or other body or any right or interest therein such company authority or body) shall, unless particulars thereof have already been furnished to the Custodian in accordance with the Trading with the Enemy Acts, 1914 to 1918, within one month from the date when this Order comes into operation by notice in writing communicate the fact to the Custodian, and shall furnish the Custodian with such particulars in relation thereto as the Custodian may require, and if any person fails to do so he shall, on summary conviction be liable to a fine not exceeding one hundred pounds;

(c) where the property charged consists of inscribed or registered stock, shares or other securities, any company, municipal authority or other body by whom the securities were issued or are managed shall, on application being made by the Custodian, notwithstanding any regulation or stipulation of the company or other body, and notwithstanding that the Custodian is not in possession of the certificate, scrip or other documents of title relating to the shares, stocks, or securities to which the application relates, enter the Custodian in the books in which the securities are inscribed or registered as the proprietor of the securities subject to the charges and the Custodian shall, subject to the consent of the Board of Trade, have power to sell or otherwise deal with the securities as proprietor of which he is so registered or inscribed, and to require any person having in his possession any documents of title to any such stock, shares or other securities to deliver the same to him, and an acknowledgment signed by him of such delivery to him, shall be a sufficient discharge to the person delivering the same;

(cc) where the property charged consists of property transferable on delivery, any person having the possession, control, or management of the property shall, on being so required by the Custodian, deliver the property to him, and the Custodian shall, subject to the

consent of the Board of Trade, have power to sell or otherwise deal with the property so delivered to him;

(ccc) where the property, right or interest subject to the charge, consists of any sum of money due to German national (not being an enemy debt within the meaning of Article 296 of the Treaty) it shall be payable to the Custodian, and shall be paid to him on demand, and the Custodian shall have power to enforce the payment thereof, and for that purpose shall have all such rights and powers as if he were the creditor;

(cccc) a certificate by the Custodian that any property, right or interest is subject to the charge shall be sufficient evidence of the facts stated in the certificate and where any such application, requirement or demand of the Custodian as aforesaid is accompanied by such a certificate, the company, municipal authority or other body by whom the securities were issued or are managed the person in possession of the property transferable by delivery, or the person by whom a sum of money is due shall comply with the application, requirement or demand, and shall not be liable to any action or other legal proceeding in respect of such compliance; but if it is subsequently proved that the property, right or interest was not subject to the charge, the owner thereof shall be entitled to recover the same from the Custodian or if it has been sold the proceeds of sale but not to any other remedy;

(d) the Board of Trade may by order vest in the Custodian any property, rights and interests subject to the charge, or the right to transfer the same, and for that purpose subsection (1) to (4) of section four of the Trading with the Enemy (Amendment) Act, 1916, shall apply as if such property, rights and interests were property belonging to an enemy or enemy subject;

(e) if any person called upon to pay any money or to transfer or otherwise to deal with any property, rights or interests has reason to suspect that the same are subject to such charge as aforesaid he shall before paying transferring or dealing with the same report the matter to the Custodian and shall comply with any directions that the Custodian may give with respect thereto;

(f) the Custodian shall have power to charge such fees in respect of his duties under this paragraph, whether by way of percentage or otherwise, as the Treasury may fix, and the fees shall be collected and accounted for by such persons in such manner and shall be paid to such account as the Treasury direct, and the incidence of the fees as between capital and income shall be determined by the Custodian.

[fol. 152] (xviii) The time at which the period of prescription or limitation of right of action referred to in Article 300 shall begin again to run shall be at the expiration of six months after the coming into force of the Treaty, and the period to be allowed within which presentation of negotiable instruments for acceptance or pay-

ment and *and* notice of non-acceptance of non-payment or protest may be made under article 301, shall be nineteen months from the coming into force of the Treaty.

(xix) Rules made during the War by any recognized Exchange or commercial Association providing for the closure of contracts entered into before the War by an enemy and any action taken thereunder are hereby confirmed subject to the provisos contained in Para. 4 (a) of the Annex to Sect. 5 of Part X of the Treaty.

(xx) There shall be imposed on rights of industrial, literary or artistic property with the exception of trademarks acquired before or during the war, or which may be acquired hereafter, by German nationals, such limitations, conditions or restrictions as the Board of Trade may prescribe, for the purpose, in the manner, in the circumstances, and subject to the limitations, contained in Art. 306 of the Treaty, and any transfer in whole or in part or other dealing with any rights so acquired as aforesaid effected since the 1st day of August, 1914, shall if and so far as it is inconsistent with any limitations conditions or restrictions so imposed be void and of no effect.

(xxi) So far as may be necessary for the purpose of article 307 the Patents, Designs, and Trademarks (temporary rules) Act, 1914, except Paragraph (B) of Sect. 1 of the Patents, Designs and Trademarks (Temporary Rules) (Amendment) Act, 1914, shall in relation to German nationals continue in force after the Treaty comes into force as if references therein to subjects of a State at war with His Majesty included references to German nationals.

(xxia) The Comptroller-General of Patents, Designs and Trademarks shall have power and shall be deemed to have had power, as from the coming into force of the Treaty, in cases where patents and designs are revived under the provisions of Art. 307 of the Treaty, to impose such conditions as he may deem reasonably necessary for the protection of persons who have manufactured or made use of the subject matter of such patents or designs while the rights had lapsed.

(xxii) The duly qualified tribunal for the purposes of Art. 310 of the Treaty shall be the Comptroller-General of Patents, Designs and Trademarks.

2. For the purposes of this Order—

The expression "enemy debt" has the meaning assigned to it by paragraph II of the Annex to Sect. 3 of Part X of the Treaty, and includes any sum which under the Treaty is to be treated or dealt within like manner as an enemy debt:

The expression "nationals" in relating to any state includes the subjects or citizens of that State and any company or corporation incorporated therein according to the law of that State and in the case of a Protectorate the natives thereof;

The expression "Custodian" means the Custodian of Enemy property appointed under the Trading with the Enemy (Amendment) Act, 1914.

The Interpretation Act, 1889, applies for the interpretation of this Order in like manner as it applies for interpretation of an Act of Parliament, and as if this Order were an Act of Parliament.

3. This Order shall apply to the whole of His Majesty's Dominions and Protectorates, except India and the self-governing Dominions. That is to say, that Dominion of Canada, the Commonwealth of Australia (which for this purpose shall be deemed to include Payua and the Norfolk Island), the Union of South Africa, the Dominion of New Zealand, and Newfoundland, but in its application to the parts of His Majesty's Dominions, outside the United Kingdom, and to British Protectorates shall be subject to such modifications as may be made by the Legislatures of those parts or those Protectorates for adapting to the circumstances thereof the provisions of this Order.

Provided that such of the provisions of this Order as give effect to Sect. 3 of Part X of the Treaty, shall not apply to Egypt.

Provided, also that if a local Clearing Office is established in India or in any self-governing Dominion. The provisions of this Order relating to the Clearing Office shall apply with respect to the relations between the Central Clearing Office and the local clearing office which must be effected through the Central Clearing Office or which may be effected by the Central Clearing Office at the request of the local clearing office.

4. This Order shall come into operation on the date when the Treaty of Peace comes into force, but so much of this Order as relates to Section III of Part X of the Treaty and the Annex to that section shall cease to be in operation after the expiration of one month from the deposits of ratification of the Treaty by His Majesty, unless in the meantime, the notification referred in paragraph (c) of Article 296 has been given to Germany, by His Majesty.

The sections of the Treaty set forth in the schedule to the orders are Sections III, IV, V, VI and VII of part X thereof.

[fol. 154] EXHIBIT 2. G.—Agreed Statement of Facts

The Trading with the Enemy (Custodian Direction) Order, 1921

At the Court of Buckingham Palace, the 10th Day of August, 1921

Present: The King's Most Excellent Majesty in Council.

Whereas by Section 5, sub-section 1 of the Trading with the Enemy Amendment Act, 1914, it is provided that the Custodian shall, except as far as the Board of Trade or the High Court or a Judge thereof may otherwise direct, and subject to the provisions

of sub-section 2 of the said Section 5, hold any money paid to, and any property vested in him under the said Act, until the termination of the present war, and shall thereafter deal with the same in such manner as His Majesty may by Order in Council direct:

And whereas in pursuance of the powers conferred upon Him by the Termination of the Present War (Definition) Act 1918, His Majesty was pleased, by Order in Council of even date herewith, to order, and did thereby order, that the 31st day of August 1921, should be treated as the date of the termination of the present war, that is to say, the day at midnight on which the present war would end, provided that nothing in the said Order and Council should effect the relations between His Majesty and the Ottoman Empire until ratifications of a Treaty of Peace with that Empire should have been exchanged or deposited:

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order and direct, and it is hereby ordered and directed, as follows:

1. The expression "enemy property" in this Order means all moneys paid or to be paid to and all property vested in or transferred or to be transferred to the Custodian under the Trading with the Enemy Acts, 1914 to 1918, or any of them and the proceeds of liquidation of such property and the investments (if any) representing the same or the residue of such moneys, property, proceeds of liquidation and investments remaining in the hands or under the control of the Custodian after the carrying out by him of any order, direction decision or instruction made or given by the Board of Trade or the High Court or a Judge thereof and the exercise or purported exercise by him of his duties under the same Acts except—

(1) such part thereof respectively as has been or shall be paid to ~~vested in~~ or transferred to or is now held by the Custodian by reason of the owner or former owner thereof being or being deemed to be a subject of or resident or carrying on business in the former Ottoman Empire; and

(2) any interest, share, rights or title of any national of the former Kingdom of Hungary or resident or person carrying on business within the territory of that Kingdom, in of or to any British Letters patent or any application for any British Letters Patent which have been vested in or granted to the Custodian under the provisions of the Trading with the Enemy Acts, 1914 to 1918, or any of such Acts;

(b) any interest, share, rights or title of any national of the former Kingdom of Hungary or resident or person carrying on business within the territory of that Kingdom, in of or to any British copy-rights which have been vested in the Custodian under the provisions of the Trading with the Enemy Acts, 1914 to 1918, and of Trading with the Enemy (Copyright) Act, 1916, or any [fols. 155 & 156] of such Acts or any money arising from the

exercise by the Custodian of his rights as the owner of any such copyright;

which excepted property is hereinafter called "excepted Enemy property".

The Interpretation Act, 1889, applies for the interpretation of this Order in like manner as it applies for the interpretation of any Act of Parliament, and as if this Order were made an Act of Parliament.

2. Except so far as may have been otherwise directed by the Board of Trade or the High Court or a Judge thereof enemy property shall be and become subject as from the date of the coming into force of this Order to the provisions of the Orders in Council made or to be made under the Treaty of Peace, Act, 1919, the Treaty of Peace (Austria and Bulgaria) Act, 1920, or the Treaty of Peace (Hungary) Act, 1921, and to the charges created thereunder in the same way and to the same extent as it would be so subject if it had been held at the dates of the coming into force of the respective Treaties of Peace with Germany, Austria, Bulgaria and Hungary, on behalf of the persons who were or would but for the same having been paid or transferred to or vested in the Custodian, have been then entitled thereto.

Provided that nothing in those Orders or herein shall operate to require any enemy property which has been or shall be released from the charges thereby respectively established to be credited or accounted for to an ex-enemy Government.

3. All enemy property shall be subject to deduction of the costs, charges and expenses of the Custodian including any statutory fee.

4. Nothing herein contained shall prejudice or affect the execution and carrying out of any order, direction, decision, or instruction made or given by the Board of Trade or the High Court or a Judge thereof in respect of any enemy property so far as the same shall not have been fully executed or carried out or the continuance of any legal or other proceedings to which in consequence of any such order, direction, decision or instruction or in the exercise or purported exercise of his duties under the Trading with the Enemy Acts, 1914-1918, the Custodian is a party. Provided that when by any order of the Board of Trade or the High Court or a Judge thereof, it has been provided that any enemy property shall not be dealt with without further order or without notice to any particular person or persons such provisions shall cease to be operative at the expiration of six months from the date of the coming into force of this order except in so far as in the meantime, the person or persons in question shall by notice in writing to the Custodian have asserted some right or interest in the enemy property in such order referred to.

5. Nothing herein contained shall prejudice or affect any claim on behalf of his Majesty in respect of Income Tax, Super Tax, Death Duties or other revenue charge or impost against enemy

property or the owners or former owners thereof and the Custodian or the Administrator of Austrian, Bulgarian or Hungarian property as the case may be shall have power to settle agree and out of the appropriate enemy property and the proceeds thereof pay or provide for any such claim.

6. Excepted enemy property shall be held by the Custodian subject to the same direction as the same is now held until His Majesty by Order in Council shall otherwise direct.

7. This Order may cited as the Trading with the Enemy (Custodian Direction) Order, 1921, and shall come into force at midnight on the said 31st day of August, 1921.

Almeric Fitz Roy.

[fol. 157] EXHIBIT 6 TO AGREED STATEMENT OF FACTS

List of Certain Statutes of the German Empire Having Reference to the Treaty of Peace

On the 10th of February 1919 a Statute was passed by the Constituent National Assembly relating to the provisional government of Germany. This statute empowered the said Assembly to enact a new Constitution of the German Empire and to legislate on other urgent matters. The Constitution of the German Empire was enacted by the Constituent National Assembly on the 11th August 1919. Art. 180 of the said Constitution provides that until the meeting of the First Imperial Diet the said Assembly exercises the legislative powers of the Imperial Diet. The first Imperial Diet met in July 1920; Statutes passed before July 1920 were therefore passed by the Constituent National Assembly. From July 1920 all Statutes were passed by the Imperial Diet. All the said Statutes required and have received the approval of the Imperial Council.

Page in record of imperial stat- utes (Reichsgesetzblatt)	Date of statute	Title of statute literally translated into English
p. 687.....	16 July, 1919.....	Statute relating to the Con- clusion of Peace between Germany and the Allied and Associated Powers.
p. 1391.....	11 August, 1919.....	Constitution of the German Empire.
p. 1527.....	31 August, 1919.....	Statute relating to expro- priations and compensa- tions resulting from the Treaty of Peace between Germany and the Allied and Associated Powers.
p. 1530.....	31 August, 1919.....	Statute relating to the car- rying out of the Treaty of Peace.
[fol. 158] p. 597.....	24 April, 1920.....	Imperial Clearing Office Statute.

Page in record of imperial stat- utes (Reichsgesetzblatt)	Date of statute	Title of statute literally translated into English
p. 939.....	14th May, 1920.....	Statute relating to the duty to give information as to property rights and interest within the territories of the Allied and Associated Powers with reference to the carrying out of the provisions of s. 10 para. 2 of the annex to art. 298 of the Treaty of Peace. (Statute as to duty to give information.)
p. 1569.....	17 August, 1920.....	Statute as to the carrying out of the provisions of the Treaty of Peace as to Mixed Arbitral Tribunals and as to the execution of foreign judgments.
p. 43.....	30 December, 1920 (pub- lished 1921).	Statutes relating to the duty to give notice as to imple- ments of airships seized for the purpose of carry- ing out art. 202 of the Treaty of Peace.
p. 235.....	22 March, 1921.....	Statute for carrying out arts. 177, 178 of the Treaty of Peace.
p. 448.....	26 March, 1921.....	Statute for carrying out arts. 169, 192, 202 and 238 of the Treaty of Peace.
p. 788.....	25 June, 1921.....	Statute as to the German and British agreement for carrying out Section IV of part X of the Treaty of Peace.
p. 1317.....	20 October, —.....	Statute relating to the Treaty signed on the 25th August 1921 between Ger- many and the United States of America.
Part I, p. 925.....	18 December, 1922.....	Statute relating to the Pro- visional Settlement of pay- ments pursuant to the Im- perial Clearing Office Stat- ute. (Clearing Office In- termediate statute.)
[fol. 159] Part I, p. 253.	24 April, 1923.....	Statute relating to the secu- rity of objects as to which the duty to deliver under the Treaty of Versailles is contested.
p. 1135.....	20 November, 1923....	Order as to the amended ver- sion of the Imperial Clear- ing Office statute.
Part I, p. 305.....	4 June, 1923.....	Statute for the diminution of the burdens of the Empire resulting from the Legisla- tion on compensation and the Clearing Office Pro- cedure under the Treaty of Versailles. (Empire Discharging Statute.)

Page in record of imperial stat- utes (Reichsgesetzblatt)	Date of statute	Title of statute literally translated into English
Part I, p. 1148.....	20 November, 1923....	(Order publishing an amended version of the last mentioned Statute).
Part II, p. 113.....	31 January, 1923.....	Statute as to the German American agreement signed on the 10th August 1922.

[fol. 160] EXHIBIT "A" TO AGREED STATEMENT OF FACTS

British Decisions

1. A. G. v. Hope (1834) I. C. M. and R. 530; r. Tyr. 878; 2 Cl. and F. 84; 8 Bli; N. S. 44 (Court of Ex. & House of Lords).
2. A. G. v. Bouwens (1838) 4 M. & W. 171 (Court of Exchequer).
3. A. G. v. Glendining (1904) 92 L. T. 87;
4. Winans v. The King (1908) L. K. B. 1022 (C. A.) 1910 A. C. 27 sub nom Winans v. A. G.
5. Sterns v. Regina (1896) 1 Q. B. 211 (Div. Court, Wright v. Kennedy).
6. Clark, McKechnie v. Clark (1904) 1 Ch. 294;
7. Munster, 1920 1 Ch. 268;
8. Noakes v. Commrs. of Inland Revenue (1900) 83 Law Times 714.
9. Stoeck v. Public Trustee, 1921—2 Ch. 67.
10. Hope & Co., v. Glendining—1911 A. C. 419.
11. Jones v. Peppercorn—1858—28 L. J. Ch. 158.
12. In re London & Globe Finance Corp.—1902—2 Ch. 416.
13. Williams v. Colonial Bank, 38 Chancery Div. 388, L. R. 15 App. Cases, 285.
14. Luxardo v. Public Trustee, (1924) 1 Chancery 1.
15. New York Life Insurance Co. v. Public Trustee, 40 Times Law Reports 430, British Court of Appeal, 1924.

[fol. 161] EXHIBIT "B" TO AGREED STATEMENT OF FACTS

Further British Statutes

- Finance Act of 1899—(62 and 63 Vict. Ch. 9).
 Trustee Act of 1893—(56 and 57 Vict. Ch. 53).
 Public Trustee Act of 1906—(6 Ed. VII—Ch. 55).

[fol. 162] EXHIBIT C TO AGREED STATEMENT OF FACTS

Present Constitution of Germany

Published in the Reichsgesetzblatt, 1919, Beginning with Page 1383

Article 4

The generally recognized rules of international law are valid as binding portions of the German federal law.

Article 7

The Federal State has jurisdiction over * * * matters concerning expropriation.

Article 178

The Constitution of the German Empire of April 16, 1871, and the Law relating to the provisional government of the Reich, of February 10, 1919, are repealed.

The other Laws and Ordinances of the Reich remain in force so far as they are not inconsistent with this Constitution. The provisions of the Peace Treaty signed at Versailles, June 28, 1919, are not affected by the Constitution.

Decrees of officials lawfully issued under laws existing up to the present time remain valid until repealed by other decrees or legislation.

Article 180

The National Assembly shall be considered as the Reichstag until the meeting of the first Reichstag. Until the first Reichs President assumes office, his functions shall be performed by the Reichs President elected pursuant to the statute relating to the provisional government of the Reich.

[fol. 163] (No. 6958) Law Relating to the Conclusion of Peace Between Germany and the Allied and Associated Powers. Of July 16, 1919

The constitutive German National Assembly has enacted the following Law, which is herewith promulgated pursuant to the consent of the Select Committee of the States (Staatenausschusses):

Article 1

The Treaty of Peace between Germany and the Allied and Associated Powers signed June 28th, 1919, and the Protocol attached thereto and also the Agreement relating to the military occupation of the Rhineland, signed on the same day, are hereby ratified.

Article 2

This Law goes into effect on the day of publication.

Berlin, July 16th, 1919.

(Signed) The Reichs President, Ebert. The President of the Reichs Ministry, Bauer.

[fol. 164] (No. 7033) Law Relating to Expropriations and Compensations by Reason of the Peace Treaty Between Germany and the Allied and Associated Powers. Of August 31, 1919

Sec. 1

The government of the Reich is authorized to expropriate property for the benefit of the realm in objects which by reason of the Peace Treaty or supplementary agreements, must be transferred to the allied and associated governments or to one of them or to a subject of the allied and associated Powers.

Sec. 2

The expropriations take place without particular procedure, if possible after hearing the parties, by notice to the owner, or if he be unknown, to the possessor of the thing to be expropriated or to the bearer of the right which is to be expropriated. The expropriation can also be made by publication.

The Reich acquires the object with the service of the notice of expropriation or in case the expropriation is by publication, at the expiration of the day after issue of the paper in which publication is made. Third parties lose their rights to the object unless the expropriation officials do not otherwise provide.

The objects divested are to be carefully dealt with.

Sec. 6, Sub. 1

The expropriation ensues against reasonable compensation. So also reasonable compensation may be granted for injuries to property resulting from a seizure not leading to expropriation.

Sec. 7, Sub. 1

The compensation shall be fixed by the expropriation officials or by some other office designated by the proper minister of the Reich. [fol. 165] If the fixing of compensation or payment thereof cannot be made immediately, an advance thereon may be approved.

Sec. 8

The provisions of Secs. 6 and 7 are applicable analogously when the expropriation of or injury to the object is spoken of or recognized as valid in the Peace Treaty itself, for the benefit of the Allied and

Associated Governments, or one of them, or for the benefit of one of the subjects of the Allied and Associated Powers, or results from the (act of the) Allied and Associated Powers or one of them, on the basis of the Peace Treaty.

[fol. 166] (No. 7034) Law in Execution of the Peace Treaty. Of August 31, 1919

Part IX, Sec. 28

The government of the Reich is authorized to take such further legal steps during recess of the National Assembly, which prove necessary and urgent for the performance of the Peace Treaty, particularly to issue decrees to regulate the relations between German territories affected by the Peace Treaty so far as concerns their attachment to the realm and other parts of the German Reich, until definite provision is made with the Powers in question.

These regulations require the approval of the Cabinet and of a Special Committee of 15 members elected by the National Assembly.

[fol. 167] Directions for Granting Advances, Aid, and Support for Damages Caused to Germans Abroad Growing Out of the War. Of Nov. 15, 1919

(D. R. Anz. No. 267, of Nov. 21, 1919)

German nationals who have sustained damages in a foreign country by reason of the war, may receive advances, aid and support pursuant to the following clauses, the right being reserved to regulate the subject by statute at a later period.

I

Prerequisites for granting advances, aid and support.

A

Advances on compensation for damages through liquidation.

Sec. 1

On the basis of Sec. 8 of the law in relation to Expropriations and Compensations, caused by the Treaty of Peace, advances may be granted for expropriation of or impairment to objects in favor of the Allied and Associated Governments, or one of them, or a subject of the Allied and Associated Powers, as far as the Peace Treaty itself mentions the same or recognizes it as effective, or as far as the same is carried out on the basis of the Treaty of Peace by the Allied and Associated Governments or one of them.

Sec. 2

If the damage has not yet been determined, the advances may nevertheless, be granted upon credible proof of the damage. The same applies in the event of credible proof that the expropriation of the object is to be expected by reason of the provisions of the Treaty of Peace or of laws enacted by heretofore hostile Powers.

B

Aids for war damages.

[fol. 168]

Sec. 6

Aids can be granted for damages to property incurred by German nationals abroad, in so far as such damages have been caused:

- 1) by warfare carried on by German, Allied or enemy military forces,
- 2) by fire or other destruction, by robbery, pillage, theft or forced sale,
- 3) by flight, shifting, pilfering or carrying away of the property.

When granting aids based on provisions in No. 2) and 3) it is prerequisite that the occurrences mentioned have taken place in connection with the war and are traceable to the German nationality of the party concerned.

[fol. 169] (No. 7573) Directions for determining the compensations resulting from the execution of the provisions of articles 297, 298, with annex, 45 subdiv. 3 and 156 subdiv. 2, of the Peace Treaty (liquidation directions). Of May 26, 1920.

According to Secs. 6, 8 of the Law regarding Expropriations and Compensations resulting from the Peace Treaty between Germany and the Allied and Associated Powers of August 31st, 1919 (Reichsgesetzblatt page 1527) the following is decreed for the execution of the provisions of Articles 297, 298 with annex, 25 to 50, 74, 121, 144 subdiv. 3, 145, 153 subdiv. 3 and 156 subdiv. 2 of the Peace Treaty with the consent of the Ministers of Finance and Justice and with the consent of the Reichsrat (National Council) and the committee chosen by the German National Assembly for drafting a constitution:

A. Seizures by the National Government

Sec. 1

To determine the amount of compensation resulting from expropriation of articles, which were sold during the war through liquidation or compulsory administration, the value of the expropriated article as of January 19th, 1920, is to serve as basis, taking into consideration the cost and the profits withdrawn.

Principles which were or are about to be established for the determination of the value of different kinds of articles, as special directions in line with paragraph 6 of the Law regarding expropriations of August 31st, 1919 (Reichsgesetzblatt, page 1527) or as provisions in line with Sec. 9 of the Law of Execution of the Peace Treaty of August 31st, 1919 (Reichsgesetzblatt, page 1530), are to be applied.

B. Seizures or Impairments by an Allied or Associated Power or by the Peace Treaty

Sec. 2

To determine compensation to be granted according to Sec. 8 of the Law of Expropriation of August 31st, 1919, (R. G. B. page 1527) in the case of liquidation, the net proceeds ascertained by the interested Allied or Associated Government would be the deciding [fol. 170] factor; in the case of retention or seizure the deciding factor would be the value of the article as ascertained by the interested Allied or Associated Government or by the Reparations Committee.

* * * * *

If an amount is credited against the reparation debt of the Reich greater than the net proceeds or value ascertained, the compensation to be granted must equal the amount credited.

Sec. 3

If anyone entitled to compensations can prove that the compensation to be granted according to Sec. 2, would not equal the value of the article liquidated, retained, or otherwise seized as of July 25, 1914, in the territory of the interested Allied or Associated Power in its currency, the difference between the value of the article thus decided upon and the net proceeds or value as decided by the interested government is to be granted as additional compensation. In the case of articles which were acquired after July 25, 1914, by the one entitled to compensation, the difference by the interested government is to be granted as additional compensation.

* * * * *

Sec. 4

The compensation will be paid in the currency of the Reich, except where the proceeds are paid out direct to or put at the disposal of the Germans entitled to them, by the interested Allied or Associated government.

The conversion of the compensation determined in foreign currency into the currency of the Reich in the cases settled under Sec. 2

is made at the average quotation of the Berlin Boerse (Exchange) on the day the Reichsausgleichsamt or other proper German authorities are notified of the amount credited or ascertained; in the cases settled under Sec. 3, if a foreign currency is the basis for determining the value, the conversion is made at the average quotation [fol. 171] of the Berlin Boerse (Exchange) on the day the application of the granting of the compensation has been received by the proper German authorities.

* * * * *

Sec. 11

The compensation can be made in money or in securities listed on exchanges, at the quotation of the day, or, with the consent of the one receiving the compensation, in some other manner.

Sec. 12

Interest on compensation is paid at the rate of five per cent. The interest starts:

a) in cases of Sec. 1, after the day of the serving of the public announcement of the advice of expropriation; or in case of a requisition, on the day of the notification of the requisition (Sec. 2, subd. 5 of the Law of Expropriation of August 31st, 1919, R. G. B. page 1527);

b) in the cases of Sec. 2, of Sec. 3, subd. 1, 3 and 4, as well as Sec. 5, subd. 6, after the day of the receipt by the Reichsausgleichsamt, or other proper German authorities, of the notification of the amount of the proceeds of liquidation or value determined by the interested Allied or Associated Government or the Reparation Committee;

* * * * *

Sec. 10

Advances and loans made from national resources are to be charged against the compensations to be granted pursuant to Secs. 2 to 8.

In cases where the value of a liquidated or retained article has been determined in foreign currency, the advances and loans are to be converted into the foreign currency at the average rate of exchange prevailing at the Berlin Boerse (Exchange) on the day of the payment and are to be deducted from the amount determined as the value.

The provision of Secs. 4, subd. 3 is applied accordingly.

[fol. 172] Law for the reduction of Burdens upon the Reich resulting from legislation relating to compensation and procedure for settlement by reason of the Treaty of Versailles (Reichs-Burdens Law). Of June 4, 1923

* * * * *

2. Compensation for Securities, Participation, and Payment Funds

Sec. 41

The preceding provisions are to be correspondingly applied to the compensation for the loss of securities sustained through liquidation or retention, unless otherwise decreed in subsequent clauses.

Sec. 42

The value, which the security had on July 25, 1914, is to be taken as the peace value in the sense of this paragraph. On securities issued after July 25, 1914, the exchange value at the time of issue is to be taken as the peace value.

The valuation is to be established at the average quotation of the Berlin Stock Exchange on the date stipulated in the first subdivision (of this paragraph) and for securities not listed there, at the average quotation on the respective Exchange where such securities are dealt in. The Exchange to be considered for such quotations is to be named by the Reich's official for securities. If an average quotation cannot be determined in accordance with subdivision 1 (of this paragraph) it is to be fixed on the basis of the prices of the world markets at the respective date.

If the value of the security is stated in foreign currencies, these are to be converted into gold marks at the peace rate of exchange. (Sec. 12, subd. 2.)

[fol. 173] (No. 8346) Law relating to the Treaty between Germany and the United States of America, signed August 25, 1921. Of October 20th, 1921

The Reichstag has enacted the following law which is, by consent of the Reichsrat (Federal Council) promulgated herewith:

Article 1

The Treaty between Germany and the United States of America, signed August 25th, 1921, is hereby ratified.

The Treaty is published hereunder.

Article 2

This law becomes effective from the day of promulgation. Berlin, October 20th, 1921.

(Signed) The Reichs President, Ebert. The Reichs Foreign Minister, Dr. Rosen.

[fol. 174] EXHIBIT D TO AGREED STATEMENT OF FACTS

The Imperial Court was at all the times at which the decisions in this exhibit mentioned were made has been continuously since, and it now is the highest court of appeal in Germany.

Digest and translated abstract of the decision of the German Imperial Court, reported in 68 Imperial Court of Germany Civil Cases, page 83, in *Norddeutsche Bank vs. the Fiscus of Hamburg*

1907

This was an action to recover a sum of money representing an alleged overpayment of stamp taxes on shares of the Pennsylvania Railroad held by the plaintiff.

The court below had sustained the contention that these were "foreign shares" within the meaning of the Imperial Stamp Tax Act. Upon appeal to the Imperial Court the Judgment was Affirmed.

The court held that though the certificates differed from the shares payable to bearer regularly issued in accordance with German Law, they nevertheless possessed the essential characteristics of such shares, especially when endorsed for transfer.

The court interprets the Stamp Tax Law as applying to all foreign securities (*wert-papiere*) in the purchase of which a German investor would be making a permanent investment of capital. The court cited, among other prior decisions of the Imperial Court, judgments rendered: Civil Matters, vol. 42, p. 40, which related to Danish shares, and to Civil Matters, vol. 37, p. 118, relating to shares of the Canadian Pacific Railroad Co.

[fol. 175] After referring to other prior decisions, the Court goes on to say, on pages 87-88 of the Report:

(Translation)

"The judge below has decided that the certificates of the Pennsylvania Railroad Co. in question in this case bear the characteristics of foreign shares within the meaning of the Imperial Stamp Tax Law. The nature of the privilege connected with the possession of the certificates according to American law which cannot be reviewed, was authoritative in arriving at this result. Therefore, we cannot go into the question whether the decision of the judge below is based upon a wrong interpretation of American Law, but rather only whether the established characteristics (of the certificates) fulfill the above mentioned conceptions of foreign shares within the meaning of the Imperial Stamp Tax Law. This we affirm in accordance with the decision appealed from. That decision points out: The certificate are acknowledgments issued by the elected organs of the Company, evidencing the share rights of the plaintiff, by means of which the share right in its essential content may be exercised and transferred. They are the only evidences of the share rights and make

possible the receipt of dividends to the bearer, without his name being registered on the books of the corporation. The exercise of the right of voting at the Annual Meeting of shareholders is also made possible by the possession of the certificate through the mediation of the said plaintiff registered as shareholder in the stock book, which (plaintiff) must furnish, against a deposit of shares, a power of attorney in the name of the depositor to represent the shares at the Annual Meeting of stockholders. Every certificate contains a printed so-called transfer form on the back and is adapted for being dealt with on a stock exchange as soon as the signature of the first bearer as registered in the share book, here the plaintiff, has been subscribed to this form. Then the certificate can pass from hand to hand. If [fol. 176] a bearer wishes to give notice also to the company that he is the shareholder, he may have the transfer of the share-right registered by the company in his name in the share-book by handing in the certificate filled out to his name, even against the will of the bearer of the share right theretofore registered; without the possession of the certificate, the transfer of the share-right is impossible. If one keeps in mind all these privileges granted by the possession of the certificate, it cannot be doubted but that the bearer has by reason of it essentially all the advantages which the bearer of a German share acquired by its possession so far as the practical exercise of the share right is concerned, and that therefore, such a certificate is to be regarded as a security (*wert papiere*) which may be employed, like domestic shares, for the permanent investment of capital."

[fol. 177] EXHIBIT D 2 TO AGREED STATEMENT OF FACTS

Digest and Translated Abstract of the Decision of the German Imperial Court, Reported in 37 Imperial Court of Germany, Civil Cases, Page 114, in *C. F. v. Prussian Fiscus*

The plaintiff sued to recover overpayment of stamp taxes on certain Canadian Pacific shares in certificates of 10 shares each, total par value \$1,000. The plaintiff sought to maintain that the certificates were not shares in the sense of the German law. The tenor of the shares seems to have been in the usual American form.

At page 115 the court said:

Translation

"By reason of the content of the certificates and having all the necessary signatures and it being admitted that it is necessary according to the by-laws to destroy the old paper giving the same share-right before a new certificate is issued, it was determined by the appeal court that the certificate evidence the transfer to J. L. of share-rights to the property of the company organized in 1882; that the certificates were not to be regarded as mere evidence of the transfer of the share-right but that they constituted the sole independent

carriers of the share-right representing the property value; that the certificates were the solely existing papers legitimating the bearer against third parties and for trade purposes, in respect to the right of participation in the property of the company. For these reasons the appeal court considered the certificates as shares, more particularly registered shares. The court adds: the circumstance that as to the company, that person is the shareholder who is registered as such on the books of the company, perhaps even without regard to the possession of the share, does not take away from the certificates the character of being shares; because the same situation usually exists as to registered shares, and under the tariffs of the Reich's Tax Law relating to shares, registered shares are undoubtedly included.

[fol. 178] "These statements (of the judge of first appeal) do not constitute any error of law." * * *

Accord: 42 German Imperial Ct., Civ. Cases, p. 40.

[fol. 179] EXHIBIT D 3 TO AGREED STATEMENT OF FACTS

Translation of Report of Decision in 58 Imperial Court of Germany, Civil Cases, Page 8, Matter of K. (Defendant-appellant) v. (Plaintiff-respondent)

"Is the jurisdiction over property so far as concerns securities (Wertpapiere) especially bearer securities, solely at the court of the place where the debtor of the claims evidenced by such securities has his domicile? Code Civ. Pro. Sec. 23.

"VII Civil Chamber. Decision of November 20, 1903, in the case of K. defendant v. L. plaintiff. Rep. VII 288/03.

"I. Provincial Court of Pozen.

"II. Supreme Provincial Court of Posen.

"Upon the following grounds:

"The question is whether the jurisdiction provided by Sec. 23, Code of Civil Procedure is competent against the defendant who lives abroad. In the court of first instance the plaintiff maintained upon the taking of evidence part of which was contradicted also the uncontradicted assertion that the defendant owned a share of stock (registered share) of the limited partnership with shares, K. P. & Co. of Posen. The judge of first instance added to the findings that the share was a document by which the enforcement of the right evidenced thereby is attached to the paper itself and that the property of the bearer of the paper represented thereby was located only at the place where the paper was located. Accordingly he dismissed the action on account of lack of jurisdiction because it was not proved that the defendant had the property in the district of the Provincial Court of Posen at the time of the beginning of the action. The judge on appeal on the other hand decided that the undoubted possession of shares of the said company was not in question because the defendant was not registered in the share book of the company; that the defendant therefore, had not acquired any rights through

the acquisition of the share, at least no rights against the company. [fol. 180] On the other hand, the jurisdiction of the Provincial Court of Posen was established by the undenied fact that the defendant at the time of the commencement of the action was the owner of a dividend coupon of the company. Although the dividend coupons are independent bearer securities and are "things" in the sense of the Civil Code, and accordingly jurisdiction pursuant to Sec. 23 of the Code of Civil Procedure is founded at the place where the bearer securities are located, nevertheless, their legal nature is not thereby exhausted. The possession of the papers given a right of claim the enforcement of which is subject to the law of obligation. Now in the case of choses in action, the domicile of the debtor is taken to be the place where the property is located; and as the debtor under the obligation promised by the dividend certificates is the said company, having its seat in Posen, the jurisdiction of the Provincial Court of Posen is well grounded. The law does not distinguish in Sec. 23 between such choses in action as are evidenced in a document and other claims. The Code of Civil Procedure, Sec. 821, treats securities (*Wertpapiere*) as things; this is purposeful so far as concerns execution, because the legal acquisition in governed according to the law of things. But the privilege of enforcing the right remains nevertheless, a chose in action and, in the case of choses in action, the jurisdiction over the property is located where the debtor has his domicile.

"The appellate judge does not thus ignore the fact that the dividend coupons are to be regarded as bearer securities and as things within the meaning of Civil Code. He assumes, however, that the jurisdiction over the property (Sec. 23 Code of Civil Procedure) is founded not alone at the place where the bearer security is located but also at the various domiciles of the debtor. The appeal on the other hand correctly raised the point that this concept rests on an improper appreciation of the nature of bearer securities. The claim [fol. 181] arising out of the bearer security is so far incorporated in the document that it cannot be enforced without possession of the same. The right growing out of the paper is inseparably bound up with the right to the paper and partakes of its legal fate. Upon this principle rests, among others, the provisions of Sec. 1293 Civil Code which makes the provisions relating to right of pledge on movable things applicable to right of pledge on a bearer security. Although the right of pledge on a bearer security has not the paper but the right arising from the paper as its essential object, nevertheless on account of the inseparable connection of this right with the right to the paper, such a right of pledge is treated as though the paper itself was in reality the object of such right (cf. Planck, comment 1—Sec. 1293 Civil Code). In Sec. 821 of the Code of Civil Procedure securities (*Wertpapiere*) are treated as tangible things in so far as concerns execution although essential object of the execution is not the paper in itself but the right growing out of the same. So accordingly also we must accept the proposition that the jurisdiction of property within the meaning of Sec. 23 of the Code of Civil Procedure so far as concerns bearer securities and securities as a whole is founded only at the place where the paper is located. It is also in accordance

with the concept of practical affairs that property represented by securities (Wertpapiere) are located where the papers themselves are located. Sec. 23 of the Code of Civil Procedure constitutes no basis for accepting a double jurisdiction—both at the place where the securities (Wertpapiere) are located and also at the place of the domicile of the debtor.”

[fol. 182] EXHIBIT D. 4. TO AGREED STATEMENT OF FACTS

Complete Textual Translation of the Decision of the German Imperial Court of 2nd June, 1923, in the Matter of B. & Sohne Plaintiff) Dr. Baux (Def.), Reported in Vol. 107, Imperial Court Reports in Civil Matters, Page 43

Statement of Facts

“A bill of exchange drawn by a bank at Santiago on the 2nd June 1914 on the Dresden Bank in London, accepted by the latter on the 8th July 1914, payable 90 days after sight, has been endorsed on the 2nd June 1914 to the firm of L. at Hamburg and by this firm to the plaintiff. As holder of the B/E the plaintiff sues the Dresdner Bank for payment of the amount due on the bill plus interest, saying that the Bank is liable for the obligations of its London branch and has been unsuccessfully asked for payment. Judgment was given for the Defendant, the appeal has been dismissed. The revision was allowed.

Reasons

“There are no doubts as to the admissibility of the claim being brought. Such do, in particular, not arise by reason of par. 1 of the law to execute the Treaty of Peace of 31st August 1919 (Decisions of the German Imperial Court vol. 38 p. 257), or by reason of par. II of the Imperial Clearing Law of 24th April 1920, the subject matter of the suit being entirely a claim of a German partnership against a German limited company, therefore not involving any payment to a national of an “enemy power” (art. 296 of the Peace Treaty) (cf. also Lehmann, Imperial Clearing Law, note 41 to par. 9).

“The Court of Appeal has, by means of the endorsements on the B/E, ascertained that the claim in question during the period from the 2nd June 1914 until the 24th August 1920, and therefore particularly at the date of the coming into force of the Peace Treaty, belonged to a German national, i. e., the firm of L. and afterwards the Plaintiff.

[fol. 183] “The Court of Appeal has dismissed the claim by reason of art 297 (c) of the said Treaty, because of its being a “right” within the meaning of that provision (also of Par. 14 of the annex to art. 297, 298 l. c.) and of its being situated within British dominion, as the B/E was made payable in London which was therefore the place of performance for the obligation of the acceptor, and as, according to a principle of private international law, with debts, the

place of performance must be considered to be their seat. It would therefore have been necessary for the plaintiffs to obtain the permission of the English government for a disposition as regards the claim, which permission had not been given. Consequently the claim had to be dismissed, and it was not necessaryⁿ to decide whether the claim came within the "winding up order" (sic) whether the charge imposed by this order was still existing and whether there was any chance of the Plaintiff being satisfied out of the assets of the London branch of the Defendant.

"These reasons are not a sufficient basis for the decision of the Court of Appeal. It is true that, having in regard general principles, especially of German law, the claim cannot be questioned on that account that the B/E has been accepted by the London branch of the Plaintiff, whilst the action has been brought against the Berlin branch. For according to German law, a branch is not a separate legal entity as distinguished from the head office, although enjoying a certain independence and being commonly regarded as an independent part of the commercial undertaking (Decisions of the German Imperial Court vol. 77 p. 60, 63): but head office and branch form a uniform business of one and the same legal being. The proprietor of the head office is therefore bearer of the rights and duties originating in the business of the branch (Decisions of the G. T. C. vol. 96, p. 161 162; Annual of the Berlin Court of Appeal (Kammergericht) vol. 27A, p. 210, 212; Staub, Commercial Code, 10th ed. Par. 13, note 6, cpl. also Isay. Private rights and interests in the Peace Treaty p. 82; Nussbaum in the Juristische Wochen-[fol. 184] schrift (Law Weekly) 1920, p. 939; Loewenthal l. c. p. 958; further Wolff l. c. p. 608 and 1921, p. 245). With a limited company, such as the Defendant, its seat as determined by the articles of association (Satzungen) is to be considered its head office (Seuffert's Archiv. vol. 63, No. 228). The head office of the Defendant is in Germany, and the Defendant has declared to be responsible for his head office in Dresden. In view of this it is unnecessary to discuss the extent to which an action for a claim arising out of a business may be brought against a branch (cf. Juristische Wochenschrift (Law Weekly) 1921, p. 245 No. 17).

"It is further to be admitted that the place of performance or the domicile of the debtor is, according to the principles of private international law as acknowledged in Germany, decisive for the question as to by which law an obligatory relation has to be judged in substance (see Commentary of the Judges of the German Imperial Court, Note II before Par. 104 of the German Civil Code, and Judgment of this Senate in Decisions of the G. I. C. vol. 103 p. 259); it has accordingly been stated in the judgment (Decisions of the G. I. C. vol. 2, p. 13), quoted by the Berlin Court of Appeal, that as regards limitation the claim upon a bill is subject to the law of the place where the bill has been made payable. In a different sense, however, is to be treated the question as to which law is applicable as regards the procedure, especially as regards the effect of certain judicial or other official measures, more particularly which place is to be considered the one where the estate is situated to which the

measure is to be extended. Here again, according to German and general private international law, the principle holds good that a claim is situated at the debtor's domicile (cf. Par. 23 Code of Civil Procedure; Stein, Code of Civil Procedure, 10th ed. note 112 to Par. 23). The Berlin Court of Appeal, however, has not taken into account that,—as also stated in that note, not in so far applied by it, and repeatedly decided by the G. I. C. (decisions, vol. 58, p. 8, Seuffert's Archiv, vol. 49, No. 112)—this general principle is, in the conception of German law, subject to an exception as far as claims are concerned which are embodied in securities (*Wertpapiere*). It must, with regard to German law, especially be proceeded on the basis that, with a claim upon a bill, the document is the bearer of the right. Then claim upon the bill is incorporated in the document inasmuch as nobody can put forward the claim unless he is in possession of the document at the same time; the right arising out of the document is inseparably connected with the right to the document and shares its legal fate (*Reichsoberhandelsgericht* (Imperial Commerical High Court) vol. ii, p. 250; Decisions of the G. I. C. vol. 3 p. 329; Staub-Stranz, *Wechselordnung* (The Law of Bills of Exchange), Introduction, note ii). The claim upon a bill is therefore, according to the conception of German law, but also according to that of daily life, situated where the document is lodged. After what the Berlin Court of Appeal has ascertained it must be taken for granted that the bill in question has been in Germany where it is now already before the outbreak of the world war up to August 1920, i. e. more particularly at the date of the coming into force of the Treaty of Versailles. If therefore the above-mentioned principles of German law only would have to be applied which formed the basis of the decision of the Berlin Court of Appeal there would be no room for the application of the art. 297 (b) of the Treaty of Versailles, called in by the said decision, as the said paragraph gives the Allied and Associated Powers the right to retain and liquidate German rights etc. only "within their dominions etc." and as art. 297 deals, according to its preamble, altogether with the question of private property etc., in "enemy countries" only.

"The action, however, must not solely be judged by German law or by the general principles of private international law. But the specific regulation of the legal relations of the parties resulting from the provisions of the Treaty of Versailles must primarily be considered as decisive, and also for the question where the disputed claim upon the bill is legally situated, since that Treaty has become a German Imperial Law by its publication and regulation in the [fol. 186] Imperial Law Gazette (*Reichsgesetzblatt*), and is therefore binding upon residents within the German Republic too (Decisions of the G. I. C. vol. 98, p. 257). The Berlin Court of Appeal did not apply any other provisions of the said Treaty but the one of art. 297 (b). It is however, doubtful whether the decision can legally be based solely upon this provision. For by its section 1 the Allied and Associated Powers reserved but the right to retain and liquidate certain goods, etc., within their dominions. If art. 2 in

connection with this provides that the liquidation shall be carried out according to the laws of the Allied or Associated State concerned, without the consent of which the German owner shall not be allowed to dispose of the goods etc., nor to subject them to any charge then this by itself cannot be taken as also giving such State the right as regards the extent of the liquidation, to seize other than such property as must, according to general principles, be considered as situated within its territory (cf. Isay, l. c. p. 79 seq.) But in supplement to art. 297 (c) must be applied the contents of the immediately following article 297 (d) and of the annex to art. 297, 298.

"Art. 297 (d) provides that, as against Germany and her nationals, all the extraordinary war measures and acts done or to be done in execution of such as defined in paragraphs 1 and 3 of the Annex, shall be considered as final and binding upon everybody. By par. 1 of the annex is conformed the validity of orders for winding up, etc., of businesses or companies or of any other orders etc., made or given or purporting to be made or given by any court or administrative body of any of the Contracting Parties in pursuance of war legislation with regard to enemy property, rights or interests. The expression "extraordinary war measures" includes, according to par. 3 of the Annex, measures of all kinds, legislative, administrative etc., also future ones, the object of which is or shall be to remove from the proprietor the power of disposition, more particularly measures to the effect of seizing, using or stopping enemy assets. [fol. 187] These provisions apply, according to par. 14 l. c., also to debts, credits and accounts etc., (cp. Isay l. c. p. 66; Lehmann, Imperial Clearing Law, note 2 before par. 9; Simon in "The Peace Treaty I, p. 152; Wolf Relations of Private Law between former enemies, p. 33). Germany has, finally, according to par. 10 of the Annex, within a certain period to deliver to each Allied and Associated Power all documents etc., held by her nationals and relating to property rights or interests in the territory of the respective Power (cp. Par. 1 of the Law of 1st August 1919 on Expropriations etc., in pursuance of the Peace Treaty, Imperial Law Gazette (Reichsgesetzblatt, p. 1527, and Isay, l. c. p. 74 seq.).

"In consequence of all this the decision of this suit requires statements as to what measures of the described kind have been taken by England with regard to claims upon bills belonging to Germans against debtors living in England, especially whether ordinances have been issued with the object of preventing actions from being brought in Germany for such claims. If such claims upon bills have been actually charged by England, this measure must be considered as binding upon German nationals as well, because it is possible that such claims too may be regarded as situated in England in view of the principles authoritative for the application of the Treaty of Versailles. If such measure, according to English law in war-time, has the effect that the charge prevents a German creditor from bringing an action for his claim in Germany—by which the debtor, as in Germany being liable for payment against return of the document only, would be enabled to destroy same and thus to make

it more difficult for the English Liquidator to assert the rights arising out of the possession of the document—then this must be acknowledged as authoritative in Germany as well.

"In this respect it was not disputed in the first judicial instance that claims upon bills belonging to Germans against debtors residing in England, and against branches of German banks there, too, were [fol. 188] subject to the charge to the extent claimed by the Defendant. But in the second instance this had become disputed. The Defendant argued as follows: In consequence of the English war measures, the London branches of German companies being separate entities (cp. Simon in "The Peace Treaty," I. p. 153) entirely independent from any influence on the part of the head office, the property belonging to such branches had been entirely dissolved from the one of the head office; therefore claims against such branches were to be considered as being situate within British dominion, no matter whether the creditor's claim was based on acceptance or otherwise; on the contrary, claims upon acceptance too would be considered as rights in England if they appeared in the books of the London branch (cp. Lehmann, Imperial Clearing Law, p. 22, note 2; p. 51, note 43); the German credit accounts, as claims upon bills of the above mentioned kind, had been charged by the winding up order; England accordingly called upon the German Government to deliver those acceptances; that charge had the effect of putting a lien on the claims of German creditors inasmuch as no action could be brought for them, unless the creditors obtained the permission of the English Government to call them in (which permission has not been given in this case, as stated by the Berlin Court of Appeal) (cp. Isay, I. c. p. 79, 82-84; id. in Bankarchiv (Bankers Magazine) XIX, p. 194; Simon in "The Peace Treaty" II, p. 529 seq.; Lehmann, Imperial Clearing Law, Note 2 in the appendix to Par. 44; id. in "The Peace Treaty" I p. 193 seq.; further the decision of the Imperial Commercial Court, quoted there p. 954, which dismissed the intervention (Einspruch) of the Imperial Commissioner for Losses in Foreign Countries, also contested by Lehmann I. c. p. 195, 196, the basis of which was that an order of a foreign government for winding up or confiscation could not have the effect that a claim, arisen in virtue of German law, was abolished or that it was lost for the German creditor); it was true that he, the Defendant, had carried on negotiations with England with a view to waive that charge, [fol. 189] but without success so far. The Plaintiff has contested this argumentation.

"The decision cannot be reached but after full knowledge has been obtained of the disputed English measures which, as stated above, are binding upon Germany and her nationals too, which partly, however, cannot be ascertained by the Court of Revision, but only by the Court concerned with examining the facts. The Court of Appeal has left these questions undecided, especially whether by means of the winding up order (see further the English Treaty of Peace Order (Germany) 1919 Goldschmidt-Zander, The Rights of Private Persons under the Treaty of Peace with Germany (Die Rechte Privater im deutschen Friedensvertrage), p. 205 seq.), the English Govern-

ment has charged claims upon bills the document of which is in Germany as well and whether such charge has been maintained. For these reasons the previous decision had to be cancelled and the matter again be referred to the Court of Appeal."

[fol. 190]

IN UNITED STATES DISTRICT COURT

E. 28-340. E. 29-33

[Title omitted]

OPINION

Final hearing in two suits in equity upon an agreed statement. Each bill was filed to establish the plaintiff's title to one hundred shares of the stock of the United States Steel Corporation, which that company had refused to recognize because of the claims of the other defendant, the Public Trustee of England and Wales. Certain other parties were joined merely to foreclose any possible rights. They appeared and expressly disclaimed any present interest.

[fol. 191] The cases are thus. The plaintiffs being two German corporations, one maintaining a regular branch in the city of London, at the outbreak of the Great War each owned certificates for one hundred shares in the United States Steel Corporation, a New Jersey corporation. In all cases the registered owners of the shares as they appeared on the books of the Steel Corporation and in the certificates issued, were domiciled and residents in England and British subjects, being brokers or the like, in whose name it is the practice there as in the United States to register shares which are to pass from hand to hand by delivery. Each certificate was endorsed in blank, that is to say, the power of attorney to transfer the shares on the back of the certificate was signed by the registered holder, no name being inserted as attorney in the blank space left for that purpose. The plaintiffs had purchased the certificate outright, and the plaintiff, the Disconto-Gesellschaft, still held them in its London branch. The plaintiff, the Bank für Handel, had pledged those which it owned with an English banking house on a running account.

Shortly after the beginning of the war Parliament passed a statute called, The Trading with the Enemy Act, which among other matters enacted that an existing public corporation, known as the Public Trustee, the defendant herein, should be empowered to seize and acquire title to the property of all enemy aliens within the realm. The provisions of this statute and its amendments need not be detailed nor the action of the Public Trustee under it, except to say that in pursuance of the powers so vested in him, and of certain orders [fol. 192] of the Board of Trade, he took the certificates into his possession, complying with whatever formalities were necessary to perfect his title in accordance with the laws of England.

It is his title so established which he now asserts and which is the reason for the refusal of the United States Steel Corporation to regis-

ter the shares in the plaintiffs' names. The question therefore is whether the title of the Public Trustee by capture is good against enemy owners when the property consists of shares in a New Jersey corporation, when the registered shareholders were subjects of Britain, and had endorsed the certificates in blank, and when the certificates had been physically reduced to possession in the United Kingdom by the Public Trustee.

Alfred K. Nippert and John Wilson Brown III for the plaintiffs.
 Frederick R. Coudert, Howard Thayer Kingsbury, Mahlon B. Doing, for the Public Trustee.

William Averell Brown for the United States Steel Corporation.

LEARNED HAND, D. J.:

I must be careful to observe what is not involved in the suits. I have nothing to decide as to the validity of the seizure of an unendorsed certificate in the name of a registered shareholder who was not only a subject of Germany, but a resident of that empire, over whom therefore the King of Great Britain had no personal jurisdiction and who owed him no allegiance. Again I have nothing to do with the power of the United States to capture these shares notwithstanding a prior capture in England; that is, I need not say whether [fol. 193] if the local sovereign lays his hand upon the corporation he should prevail over similar action taken elsewhere against the shareholder, *Miller v. Kaliwerke, etc.*, 283 Fed. Rep. 746 (C. C. A. 2). Perhaps that would always be a diplomatic question; in any event it is not up in these suits. Any rights of the United States as captor depended upon a state of war and ceased after July second, 1921, no capture having been attempted up to that time.

It may be as well here to take up the point raised by the United States Steel Corporation that the United States, not as putative captor, but as transferee under the Treaty of Berlin, might demand the same shares after the termination of these suits, since no decree in this suit can foreclose it. While it is therefore quite true that the United States Steel Corporation is not protected against such a demand, I think that the risk to the company is not serious enough to justify a refusal to adjust the differences actually presented. The United States by hypothesis must claim under the treaty, and its rights would be in devolution from those of the plaintiffs. If, as I believe, those rights had already ended before the treaty was made, it is difficult to see how the United States, which may not claim as captor, could succeed as grantee. Furthermore, though it is reasonably apparent that Congress does not mean to act in the matter, yet, since no lapse of time would affect its rights, the controversy could in all probability never be adjusted, if the United States is a necessary party. It must be forever hung up without decision against the possible assertion by the United States, good till the end of time, of a claim, derivative merely from the rights of the plaintiffs, which it apparently never means to make. Faced with [fol. 194] this very practical dilemma, it appears to me that I may

properly say that while the United States would be a proper party, it is not a necessary one, and that the case may proceed. Nor does the company's risk seem to me substantial enough to require the new certificates to carry a notice which might very seriously affect their negotiability, as suggested.

Coming then to the actual issues, I have to decide what person the company must recognize as shareholder. In deciding that question I can only follow the law of the place where I sit. It is indeed commonly said that when a court must consider the legal effect of events happening elsewhere it enforces foreign law. That I conceive is a compressed statement which it is at times useful to expand. Of necessity no court can enforce the law of another place. It is, however, the general law of all civilized peoples that in adjusting the rights of suitors courts will impute to them rights and duties similar to those which arose in the place where the relevant transactions occurred. *Hilton v. Guyot*, 159 U. S. 113, 163, *Guinness v. Miller*, 291 Fed. Rep. 769. While I must therefore first look to the law of the State of New York to ascertain the duties of the United States Steel Corporation, that State will impose duties similar to those of the domicile of the corporation, New Jersey. At the time when these certificates were issued January, 1913 and February, 1916, the Uniform Stock Transfer Act had not been enacted in New Jersey, (it was passed in March, 1916), and by Section 23 of that act it does not apply to certificates issued before its passage. Hence the question as to who must be recognized as the shareholder is to be determined by the common law of New Jersey. There is no difference, however, between the common law, *Johnston v. Laffin*, [fol. 195] 103 U. S. 800, and the law of that State, *Broadway Bank v. McElrath*, 13 N. J. Eq. 24; that is to say, the endorsement in blank and delivery of the certificate transfer the title to the shares. No controversy can arise as to the first of these conditions, because under the law of New Jersey as well as under the law of England the signature of the power of attorney by the registered holder without filling in any name was an endorsement in blank. Controversy can and does arise over the question of delivery, and the agreed statement of facts merely says that the Public Trustee "physically seized, took possession of and retained" the certificates. The "vesting orders" provide that the securities shall "vest" in him, together with the right to take possession of the documents.

It is, of course, possible that in the case of the Disconto-Gesellschaft the local agent of the plaintiff surrendered the certificates on demand and in the case of the Bank fur Handel that the pledgee did the same. Were those facts admitted the case would at once be clear, because such a surrender would be a delivery within the common law of New Jersey. The fact that the delivery was compelled by the sanctions of the English statute would be irrelevant. Any deliberate action of the sovereign within its own territory is necessarily lawful, *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 356. No foreign court would treat it otherwise, unless it violates the ethos of its own people, a position scarcely tenable in

a country which under similar, though less pressing, provocation, did exactly the same thing.

However, the agreed facts do not allow this easy disposition of [fol. 196] the suits, because it is consistent with them that the Public Trustee may have forcibly seized the certificate and such a change of possession would not fall within any latitude of definition of the word, "delivery," as the plaintiffs properly maintain. Therefore, as the English statute was not part of the law of New Jersey, it becomes necessary to determine whether the transfer of title to the shares is governed by the law of New Jersey or the law of England. It is indeed sometimes said that the transfer of shares must be governed by the law of the corporate domicile, but the cases do not, I think, go so far. In *Hammond v. Hastings*, 134 U. S. 401, the question was only whether the transferee took subject to the corporation's lien; in *Shaw v. Goebel Brewing Co.*, 202 Fed. Rep. 408, (C. C. A. 6), whether the conditions annexed to the shares were valid against the assignee. *Black v. Zacharie*, 3 How. 483, indeed recognizes that the transfer of "equitable title" is governed by the *lex loci*, and within "equitable title" Justice Story certainly included all that we are discussing here. Under the law of England the transfer of title is determined by the *lex loci*, *Williams v. Colonial Bank*, L. R. 38 Ch. Div. 388, (C. A.). This must be true whether the shares be identified with the certificates *qua* documents, or whether the rights of the transferee be worked out as attorney for the registered holder.

It is scarcely necessary to say that if the shares are identified with the certificates they pass as chattels and the law of the place of transfer controls, certainly when there is a local statute which is relevant, *Green v. Van Buskirk*, 5 Wall. 307. There are many cases which do so identify them and perhaps these should serve without more, *Yazoo, etc. Co. v. Clarksdale*, 257 U. S. 10, *Simpson v. N. J.* [fol. 197] *Cont. Co.*, 165 N. Y. 193, *Beal v. Carpenter*, 235 Fed. Rep. 273 (C. C. A. 8), *Merritt v. Amer. Steel Barge Co.*, 79 Fed. Rep. 228, (C. C. A. 6).

Yet the same result follows by an analysis which I must own seems to me more accurate. When the registered holder executed the powers of attorney upon the back of the certificates he made grants in England which should be interpreted by English law, *William v. Colonial Bank*, L. R. 38 Ch. Div. 388 (C. A.). That is to say, the grantees of the powers must be ascertained by a resort to English decisions. Under that law he gave power to any holder of the certificate to insert his name and become the grantee, *Colonial Bank v. Hepworth*, L. R. 36 Ch. Div. 36, 53, 54. Within the term "holder" might conceivably be included (1) anyone in actual possession, (2) anyone in rightful possession, or (3) anyone who had title. Section Five of the Uniform Stock Transfer Law includes the first, but I need not go so far as that. I need only say that the holder of the title is included.

I understand that this the plaintiffs deny, asserting on the contrary that the grant of the power is intended to include only such holders as took title to the certificates by voluntary transfer. Ob-

viously this cannot be so, else no sale of such certificates under attachment or execution would pass more than the naked documents, which is quite contrary to the cases I have cited a moment since. Nor is the position any more tenable in principle. The endorsement is precisely to give currency to the document, to make it more than an idle bit of evidence of a right which remains in the hands of the [fol. 198] assignor. To suppose that his purpose includes the possibility that the grantee of the power shall be separated from the owner of the certificate is to suppose that he contemplates that very event which his endorsement was meant to obviate. The certificate becomes in effect payable to bearer and the power must run with property in the document which is in substance only ancillary to it. Hence under this view I have only to find just as before whether the title to the certificates passed to the Public Trustee. That question I have answered and for the reasons already given.

The plaintiffs' cases do not look to another conclusion. The case of *Jellenik v. Huron Copper Co.*, 177 U. S. 1, is often cited to show that corporate shares can have no situs except at the domicile of the corporation. It holds nothing of the sort; only that they do have a situs there, which is a very different matter. In truth corporate shares have a situs in both places, so long as we insist upon applying to them a word drawn from the law of land and chattels which must be in a single place at a time. Because a share, if we do not wish to call it a chose in action, is at least a legal relation, and can have no spatial character except by virtue of the parties to the relation. Wherever either party is, there is the property as respects such parts of the relation as touch that party. Where the corporation is, there dividends paid and all other duties performed to which the shareholder is entitled. There also may the sovereign declare who shall be the shareholder. Acts required of the corporation as performance of those duties will be normally treated as performance elsewhere. Similarly where the shareholder is, there the share may [fol. 199] be transferred by compulsion and perhaps, since he is subject to compulsion, by decree in rem even when he does not obey. There is no inconsistency in all this until one presupposes that because the share is in one place, it cannot be in any other. *Jellenik v. Huron Copper Co.*, *supra*, does not intimate anything of the sort.

Again, *Miller v. Kaliwerke, etc.*, *supra*, 283 Fed. Rep. 746 (C. C. A. 2), has equally nothing to do with the facts at bar. It arose on a petition under our own Trading with the Enemy Act, ancillary to the Custodian's statutory powers to reduce property to his possession. No claim of right was good against it; all such must be made under Section Nine of that act after the Custodian gets possession of the res. For that reason the court expressly reserved all questions of right, and the case decides no more than that where the corporation is there also are the shares, which indeed adds nothing to *Jellenik v. Huron Copper Co.*, *supra*. Moreover, even if the court had assumed to decide the relative rights of the United States as captor at the domicile and the United Kingdom as captor of the certificate endorsed in blank, it would not be relevant. That issue

would depend upon whether the Public Trustee as successor of the German shareholder should succeed against the United States, which had jurisdiction of the corporation itself. Without suggesting any answer to that question it is quite enough to say that it has nothing to do with a situation where the Public Trustee comes into conflict only with the German shareholder.

The same may in substance be said of *Randfontein, etc., Ltd. v. Custodian of Enemy Property*, in the Appellate division of the Su- [fol. 200] preme Court of South Africa. There the question arose of shares in South African companies which the Custodian claimed under the Treaty of Versailles which transferred to the Union of South Africa all property within that State. The court decided that the shares were within the Union and could be seized. Had the certificates been seized elsewhere and the captor presented them for registry the same question would have arisen as would have arisen in *Miller v. Kaliwerke, etc., supra*, had the Public Trustee filed a claim under Section Nine of our own Trading with the Enemy Act. As it stands the case has no bearing upon those at bar.

Finally, the plaintiffs argue that we should not recognize captures made in the United Kingdom until it appears that that nation extends a like recognition to captures made here. The point depends upon a misunderstanding of the effect of the case of *Hilton v. Guyot, supra* (159 U. S. 113). Whatever may be thought of that decision, the court certainly did not mean to hold that an American court was to recognize no obligations or duties arising elsewhere until it appeared that the sovereign of the locus reciprocally recognized similar obligations existing here. That doctrine I am happy to say is not a part of American jurisprudence. It is true that a judgment creates a debt and is indeed an instance of the general principle. But it is a most especial instance and no generalizations may properly be drawn from it. A judgment involves the direct action of a court against individuals and offers more excuse for national jealousy than when the obligation arises from laws of general application. So far as I know the doctrine of reciprocity has been confined [fol. 201] to foreign judgments alone and has no application to situations of this sort. Moreover it is a doctrine in supposed protection of the nationals of the forum. On what theory citizens of a foreign state may invoke it I cannot understand. These plaintiffs are German citizens and it would scarcely lie in their mouth to complain even had it affirmatively appeared that the courts of England would not recognize similar captures made of shares under our own statutes. Much less must it be shown that they would so recognize them.

The Public Trustee may take a decree declaring that the plaintiffs are not entitled to the shares at issues or to be registered as shareholders, and directing the United States Steel Corporation upon surrender of the proper certificates to register him as shareholder and to issue appropriate certificates to him in evidence thereof.

Costs against the plaintiffs.

June 6, 1924.

[Title omitted]

DECREE—Filed June 22, 1924

This cause came on to be heard on pleadings and proofs at this term on the 1st day of May, 1924, and was argued by Alfred K. Nippert, Esq., and John Wilson Brown III Esq., of counsel for the plaintiff, by William Averell Brown, Esq., of counsel for the defendant, United States Steel Corporation, and by Frederic R. Coudert, Esq., Howard Thayer Kingsbury, Esq., and Mahlon B. Doing, Esq., of counsel for the defendant Public Trustee and for the other defendants above named, and thereupon, upon consideration thereof, and the court having made and filed its opinion, and upon motion of Coudert Brothers, Esqs., solicitors for the defendant, Public Trustee, it is

Ordered, adjudged and decreed as follows:

1. That the plaintiff is not the owner of and is not entitled to the [fol. 203] shares of stock of the defendant United States Steel Corporation described in the Bill of Complaint herein, to-wit, one hundred (100) shares of common stock represented by ten certificates numbered H-394943 to 50 inclusive and H-402081 to 82 inclusive, standing in the name of Marks, Bulteel, Mills & Company, and is not entitled to be registered upon the books of the defendant United States Steel Corporation as the holder of said shares.
2. That the defendant, Public Trustee, is the owner of and is entitled to said shares of stock above mentioned and described and is entitled to be registered upon said books as the holder thereof and to receive the dividends thereon heretofore accrued and unpaid.
3. That upon the surrender by the defendant, Public Trustee, to the defendant United States Steel Corporation of said certificates of its stock standing in the name of Marks, Bulteel, Mills & Company endorsed by said Marks, Bulteel, Mills & Company, the defendant, United States Steel Corporation, be and it hereby is directed and required to register upon its books the said Public Trustee or his nominee as the holder of said shares, and to issue to and in the name of the said Public Trustee or his nominee a new certificate or certificates for said shares, in the regular and customary form of certificates of stock usually issued by said United States Steel Corporation and containing no words of limitation or qualification of the ownership of the stock represented by said certificate or certificates, and to pay to said Public Trustee or his nominee all dividends thereon heretofore accrued and unpaid.
4. That the defendants, Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, co-partners trad-

[fol. 204] ing as Marks, Bulteel, Mills & Company, have not, and none of them has, any right, title or interest in and to said shares of stock or any of them.

5. That the plaintiff's Bill of Complaint be and it hereby is dismissed upon the merits with costs against the plaintiff to the defendant Public Trustee and to the defendant, United States Steel Corporation.

Learned Hand, United States District Judge.

[fol. 205] IN UNITED STATES DISTRICT COURT

E, #29-33

[Title omitted]

DECREE—Filed June 20, 1924

This cause came on to be heard on pleadings and proofs at this term on the 1st day of May, 1924, and was argued by Alfred K. Nippert, Esq., and John Wilson Brown III, Esq., of counsel for the plaintiff, by William Averell Brown, Esq., of counsel for the defendant, United States Steel Corporation, and by Frederic R. Coudert, Esq., Howard Thayer Kingsbury, Esq., and Mahlon B. Doing, Esq., of counsel for the defendant Public Trustee and for the other defendants above named, and thereupon, upon consideration thereof, [fol. 206] and the court having made and filed its opinion, and upon motion of Coudert Brothers, Esqs., solicitors for the defendant, Public Trustee, it is

Ordered, adjudged and decreed as follows:

1. That the plaintiff is not the owner of and is not entitled to the shares of stock of the defendant United States Steel Corporation described in the Bill of Complaint herein, to-wit, one hundred (100) shares of common stock heretofore represented by ten certificates numbered H-426734 to 43 inclusive, registered in the names of Herbert Hopkins and Thomas Fraser, and now represented by ten certificates numbered H-431318 to 26 inclusive and H-431760 standing in the name of the English Association of American Bond & Shareholders, Limited, and that the plaintiff is not entitled to be registered upon the books of the defendant United States Steel Corporation as the holder of said shares.

2. That the defendant, Public Trustee, is the owner of and is entitled to said shares of stock above mentioned and described and is entitled to be registered upon said books as the holder thereof and to receive the dividends thereon heretofore accrued and unpaid.

3. That upon the surrender by the defendant, Public Trustee, to the defendant United States Steel Corporation of said certificates of its stock standing in the name of English Association of American

Bond & Shareholders, Limited, endorsed by said English Association of American Bond & Shareholders, Limited, the defendant, United States Steel Corporation, be and it hereby is directed and required to register upon its books the said Public Trustee or his nominee as the holder of said shares, and to issue to and in the name of the said Public Trustee or his nominee a new certificate or certificates for said shares, in the regular and customary form of certificates of [fol. 207] stock usually issued by said United States Steel Corporation and containing no words of limitation or qualification of the ownership of the stock represented by said certificate or certificates, and to pay to said Public Trustee or his nominee all dividends thereon heretofore accrued and unpaid.

4. That the defendants London & Liverpool Bank of Commerce, Limited, Herbert Hopkins, individually and as liquidator of London & Liverpool Bank of Commerce, Limited, and Violet Gertrude Fraser, as executrix of the Will of Thomas Fraser, deceased, have not, and none of them has, any right, title or interest in and to said shares of stock or any of them, and that the defendant, English Association of American Bond & Shareholders, Limited, has no right, title or interest in and to the said shares of stock or any of them except only as nominee of the defendant Public Trustee.

5. That the plaintiff's Bill of Complaint be and it hereby is dismissed upon the merits with costs against the plaintiff to the defendant Public Trustee and to the defendant, United States Steel Corporation.

Learned Hand, United States District Judge.

[fol. 208]

IN UNITED STATES DISTRICT COURT

E-28-340

[Title omitted]

ORDER OF CONSOLIDATION

Upon the annexed consent of the solicitors for the respective parties herein, it is

Ordered, that the above entitled suit be and the same hereby is consolidated with the suit now pending herein bearing equity No. E 29-33 in which the Bank fur Handel und Industrie, a corporation, is plaintiff, and the United States Steel Corporation, a corporation, Public Trustee, a corporation, English Association of American Bond & Shareholders Limited, a corporation, London & Liverpool Bank of Commerce, Limited, a corporation, Herbert Hopkins individually and as liquidator of London & Liverpool Bank of Commerce, Limited, and Violet Gertrude Fraser as executrix of the Will of Thomas Fraser, deceased, are defendants.

W. L. Grubb, United States District Judge.

[fol. 209] Entry of the foregoing order is hereby consented to.
September 8th, 1924.

Albert M. Austen, Solicitors for Plaintiff. Kenneth B. Halstead, Solicitor for Defendant, United States Steel Corporation. Coudert Brothers, Solicitor- for Defendants Public Trustee et al.

[fol. 210] IN UNITED STATES DISTRICT COURT

E.-28-340

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed Sept. 9, 1924

To the Honorable District Judge of the United States for the Southern District of New York:

The above named plaintiff conceiving itself aggrieved by the order and decree entered on June 20th, 1924, in the above entitled proceedings, does hereby appeal from said order and decree to the Supreme Court of the United States and says that this is a case that involves the construction and application of the Constitution of the United States and a Treaty of the United States as is more particularly shown in the assignment of errors which is filed herewith, and prays that its appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said order and decree was made, may be sent to the Supreme Court of the United States.

Albert M. Austen, Solicitors for Plaintiff.

New York, September 8th, 1924.

[fol. 211] And now on this 9th day of September 1924, it is ordered that the transcript of the record and all papers and proceedings herein be consolidated with those in the suit now pending before this Court bearing Equity No. 29-33 in which the Bank fur Handel und Industrie, a corporation, is plaintiff, and the United States Steel Corporation, a corporation, English Association of American Bond & Shareholders, Limited, a corporation, London & Liverpool Bank of Commerce Limited, a corporation, Herbert Hopkins individually and as liquidator of London & Liverpool Bank of Commerce, Limited, and Violet Gertrude Fraser, as executrix of the will of Thomas Fraser, deceased, are defendants and that the appeal herein be allowed as prayed for.

W. L. Grubb, United States District Judge.

[fol. 212] Upon the annexed consent of the solicitors for the respective parties herein, the bond for security for costs of appeal is hereby dispensed with.

Dated September 9th, 1924.

W. L. Grubb, United States District Judge.

The filing of bond for security for costs on appeal is hereby waived.
 Kenneth B. Halstead, Solicitor for Defendant, United States
 Steel Corporation. Coudert Brothers, Solicitors for De-
 fendant Public Trustee et al.

[fol. 213] IN UNITED STATES DISTRICT COURT

E.-28-340

[Title omitted]

ASSIGNMENTS OF ERROR—Filed September 9, 1924

And now comes Direction der Disconto Gesellschaft, Plaintiff, and makes and files this its assignment of error.

I. The United States District Court for the Southern District of New York erred in its order, judgment and decree that the Plaintiff was not the owner of the shares of stock of defendant United States Steel Corporation involved in suit.

II. The United States District Court for the Southern District of New York erred in its order, judgment and decree that the Plaintiff was not entitled to be registered upon the books of the defendant United States Steel Corporation as the holders of said shares.

III. The United States District Court for the Southern District of New York erred in its order, judgment and decree that Public Trustee was owner of and entitled to said shares of stock and entitled to be registered upon the books of said United States Steel Corporation as the holder of said shares and to receive the dividends thereon.

IV. The United States District Court for the Southern District of [fol. 214] New York erred in its order, judgment and decree that upon surrender of the certificates of the stock in suit by the defendant Public Trustee, the defendant United States Steel Corporation is required to register said Public Trustee as the holder of said shares and to issue new certificates for said shares to said Public Trustee or his nominee in its regular and customary form.

V. The United States District Court for the Southern District of New York erred in its order, judgment and decree that the Plaintiffs' Bill be dismissed.

VI. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that defendant Public Trustee was not owner of the shares of stock in suit and not entitled to dividends thereon and not entitled to the issue of new certificates for said shares upon surrender of the certificates thereof in said Trustee's possession.

VII. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that said

Public Trustee by seizure in England of the certificates of said stock of the said United States Steel Corporation obtained no right, title or interest in or to the shares represented thereby.

VIII. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that said shares of stock of said United States Steel Corporation and the rights of the owners thereof were property within the United States and protected by the Constitution of the United States and in particular amendment five thereof against seizures except by laws of the United States and of the State of New Jersey under the Constitution of the United States and of the State of New Jersey, and that by seizure of said certificates of said shares said Public Trustee acquired [fol. 215] no rights in said shares against Plaintiff or said United States Steel Corporation.

IX. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that the shares of stock in suit and the rights of the owners therein were at all times and now are within the United States and subject to the sole jurisdiction thereof, and that said shares were not contemplated within the terms of the Treaty of the United States with Germany, known as the Treaty of Berlin, as property "which was on April 6, 1917, in or has since that date come into the possession or under the control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees," and that by said Treaty the rights, titles and interests of Plaintiff in and to said shares were confirmed as against the United States and all others.

X. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that Plaintiff was the owner of and entitled to said shares of stock and entitled to be registered upon the books of the said United States Steel Corporation as the holder and owner thereof and to receive the dividends thereon heretofore accrued.

Wherefore the plaintiff prays: That the said decree be reversed and that the District Court be instructed to enter such decree as is prayed for by the Bill.

Albert M. Austin, Solicitor for Plaintiff.

[fol. 216] CITATION—In usual form; filed Sept. 9, 1924; omitted in printing

[fol. 217] IN UNITED STATES DISTRICT COURT

E. 29-33

[Title omitted]

ORDER OF CONSOLIDATION

Upon the annexed consent of the solicitors for the respective parties herein, it is,

Ordered, that the above entitled suit be and the same hereby is consolidated with the suit now pending herein bearing equity No. E 28-340 in which the Direction der Disconto Gesellschaft, a corporation, is plaintiff, and the United States Steel Corporation, a corporation, Public Trustee, a corporation, Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, co-partners trading as Marks, Bulteel, Mills & Co., are defendants.

W. L. Grubb, United States District Judge.

[fol. 218] Entry of the foregoing order is hereby consented to.
September 8th, 1924.

Albert M. Austin, Solicitors for Plaintiff. Kenneth B. Halstead, Solicitor for Defendant United States Steel Corporation. Couderd Brothers, Solicitor for Defendants Public Trustee et al.

[fol. 219] IN UNITED STATES DISTRICT COURT

E. 29-33

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed Sept. 9, 1924

To the Honorable District Judge of the United States for the Southern District of New York:

The above named plaintiff conceiving itself aggrieved by the order and decree entered on June 20th, 1924, in the above entitled proceedings, does hereby appeal from said order and decree to the Supreme Court of the United States and says that this is a case that involves the construction and application of the Constitution of the United States and a Treaty of the United States as is more particularly shown in the assignment of errors which is filed herewith, and prays that its appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said order and decree was made, may be sent to the Supreme Court of the United States.

Albert M. Austin, Solicitors for Plaintiff.

New York, September 8th, 1924.

[fol. 220] And now on this 9th day of September, 1924, it is ordered that the transcript of the record and all papers and proceedings herein be consolidated with those in the suit now pending before this Court bearing Equity No. E-28-340 in which the Direction der Disconto-Gesellschaft, a corporation, is plaintiff, and the United States Steel Corporation, a corporation, Public Trustee, a corporation, Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, co-partners trading as Marks, Bulteel, Mills & Co. are defendants and that the appeal herein be allowed as prayed for.

W. L. Grubb, United States District Judge.

[fol. 221] Upon the annexed consent of the solicitors for the respective parties herein, the bond for security for costs of appeal is hereby dispensed with.

Dated September 9, 1924.

W. L. Grubb, United States District Judge.

The filing of bond for security for costs on appeal is hereby waived.

Kenneth B. Halstead, Solicitor for Defendant United States Steel Corporation. Coudert Brothers, Solicitors for Defendant- Public Trustee et al.

[fol. 222] IN UNITED STATES DISTRICT COURT

E. 29-33

[Title omitted]

ASSIGNMENTS OF ERROR—Filed September 9, 1924

And now comes Bank fur Handel und Industrie, plaintiff, and makes and files this its assignment of error.

I. The United States District Court for the Southern District of New York erred in its order, judgment and decree that the plaintiff was not the owner of the shares of stock of defendant United States Steel Corporation involved in suit.

II. The United States District Court for the Southern District of New York erred in its order, judgment and decree that the plaintiff was not entitled to be registered upon the books of the defendant United States Steel Corporation as the holder of said shares.

III. The United States District Court for the Southern District of New York erred in its order, judgment and decree that Public Trustee was owner of and entitled to said shares of stock and entitled to be registered upon the books of said United States Steel Corporation as the holder of said shares and to receive the dividends thereon.

IV. The United States District Court for the Southern District [fol. 223] of New York erred in its order, judgment and decree that upon surrender of the certificates of the stock in suit by the defendant Public Trustee, the defendant United States Steel Corporation is required to register said Public Trustee as the holder of said shares and to issue new certificates for said shares to said Public Trustee or his nominee in its regular and customary form.

V. The United States District Court for the Southern District of New York erred in its order, judgment and decree that the Plaintiff's Bill be dismissed.

VI. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that defendant Public Trustee was not owner of the shares of stock in suit and not entitled to dividends thereon and not entitled to the issue of new certificates for said shares upon surrender of the certificates thereof in said Trustee's possession.

VII. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that said Public Trustee by seizure in England of the certificates of said stock of the said United States Steel Corporation obtained no right, title or interest in or to the shares represented thereby.

VIII. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that said shares of stock of said United States Steel Corporation and the rights of the owners thereof were property within the United States and protected by the Constitution of the United States and in particular amendment five thereof against seizures except by laws of the United States and of the State of New Jersey under the Constitution of the United States and of the State of New Jersey, and that by seizure of said certificates of said shares said Public Trustee [fol. 224] acquired no rights in said shares against Plaintiff or said United States Steel Corporation.

IX. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that the shares of stock in suit and the rights of the owners therein were at all times and now are within the United States and subject to the sole jurisdiction thereof, and that said shares were not contemplated within the terms of the Treaty of the United States with Germany, known as the Treaty of Berlin, as property "which was on April 6, 1917, in or has since that date come into the possession or under the control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees" and that by said Treaty the rights, titles and interests of Plaintiff in and to said shares were confirmed as against the United States and all others.

X. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that

plaintiff was the owner of and entitled to said shares of stock and entitled to be registered upon the books of the said United States Steel Corporation as the holder and owner thereof and to receive the dividends thereon heretofore accrued.

Wherefore the plaintiff prays: That the said decree be reversed and that the District Court be instructed to enter such decree as is prayed for by the Bill.

Albert M. Austin, Solicitors for Plaintiff.

[fol. 225] CITATION—In usual form; filed Sept. 9, 1924; omitted in printing

[fol. 226] IN UNITED STATES DISTRICT COURT

E. 28-340. E. 29-33

[Title omitted]

STIPULATION AS TO PARTS OF RECORD TO BE PRINTED

It is hereby stipulated and agreed by and between the solicitors for the respective parties in the above entitled suits that the Clerk of this Court be and he is hereby directed to prepare, certify and transmit to the United States Supreme Court a consolidated transcript of the record in the above entitled suits including therein the [fol. 227] following papers only:

1. Amended bill of complaint of the plaintiff, Direction der Disconto-Gesellschaft, in Action No. E. 28-340.

2. Notice of appearance of defendant, United States Steel Corporation; in Action No. E. 28-340.

3. Notice of appearance of defendant. Public Trustee, in Action No. E. 28-340.

4. Notice of appearance of defendants, Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, co-partners trading as Marks, Bulteel Mills & Co., in Action No. 28-340.

5. Answer of defendant, United States Steel Corporation, to the Amended bill of complaint of Direction der Disconto-Gesellschaft, in Action No. E. 28-340.

6. Answer of defendant, Public Trustee, to the amended bill of complaint of Direction der Disconto-Gesellschaft, in Action No. E. 28-340.

7. Answer of defendants, Egremont John Mills, Walter Clarke, Morris Nathaniel Julius and Donnell Shepard Post, co-partners

trading as Marks, Bulteel, Mills & Co., to the amended bill of complaint of Direction der Disconto-Gesellschaft in Action No. 28-340.

8. Amended bill of complaint of Bank fur Handel und Industrie, in Action No. 29-33.

9. Notice of appearance of defendant, United States Steel Corporation, in Action No. 29-33.

10. Notice of appearance of defendant, Public Trustee, in Action No. 29-33.

11. Notice of appearance of defendants, English Association of American Bond & Shareholders, Limited, London & Liverpool Bank of Commerce, Limited, Herbert Hopkins individually and as liquidator of London & Liverpool Bank of Commerce, Limited, and Violet Gertrude Fraser, as executrix of the Will of Thomas Fraser, deceased, in Action No. E. 29-33.

[fol. 228] 12. Answer of defendant, United States Steel Corporation, to the amended bill of complaint of Bank fur Handel und Industrie in Action No. 29-33.

13. Answer of defendant, Public Trustee, to the amended Bill of Complaint of Bank fur Handle und Industrie in Action No. E. 29-33.

14. Answer of defendants, English Association of American Bond & Shareholders, Limited, London & Liverpool Bank of Commerce, Limited, Herbert Hopkins individually and as Liquidator of London & Liverpool Bank of Commerce, Limited, and Violet Gertrude Fraser, as executrix of the Will of Thomas Fraser, deceased, to the amended bill of complaint of Bank fur Handel und Industrie in Action No. E. 29-33.

15. Joint agreed statement of proceedings and evidence in both suits approved herein September 24th, 1924.

16. Agreed statement of facts and supplemental agreed statement of facts entitled in both suits, dated April 14, 1924, and read in evidence upon the hearing, together with exhibits 2 (a) 1-2 (a) 2-2 (a) 3-2 (a) 4-2 (b) 1-2 (b) 2-2 (b) 3-2 (b) 4-2 (b) 5-2 (b) 6-2 (b) 7-2 (b) 8-2 (c) 1-2 (c) 2-2 (d) 1-2 (d) 2-2 (d) 3-2 (d) 4-2 (d) 5-2 (d) 6-2 (d) 7-2 (e) 1-2 (e) 2-2 (e) 3-2 (e) 4-2 (e) 5-2 (e) 6-2 (f) 1-2 (f) 2-2 (f) 3-2 (f) 4-2 (f) 5-2 (f) 6-2 (f) 7-2 (f) 8-2 (g) 1-2 (g) 2-6 (a)-6 (b)-6 (c)-"A"- "B"-C1-C2-C3a-C3b-C4-C5a-C5b-C6a-C6b-C6c-C7-C8-D1a-D1b-D1c-D2a-D2b-D3a-D3b-D3c-D4a-D4b-D4c-D4d-D4e-D4f-D4g-D4h annexed thereto.

17. Joint opinion of United States District Judge Learned Hand in both suits, dated June 6th, 1924.

18. Decree dated June 20, 1924 in action No. E. 28-340.

19. Decree dated June 20, 1924 in action No. E. 29-33.

20. Order of consolidation dated September 9th, 1924 in action No. E. 28-340.

21. Petition for appeal and assignments of error dated September 8th, 1924 and order allowing appeal and dispensing with security [fol. 229] for costs, dated September 9th, 1924 in action No. E. 28-340.

22. Citation dated September 9th, 1924 in action No. E. 28-340.

23. Order of consolidation dated September 9th, 1924 in action No. E-29-33.

24. Petition for appeal and assignments of error dated September 8th, 1924 and order allowing appeal and dispensing with security for costs, dated September 9th, 1924 in action No. E. 29-33.

25. Citation dated September 9th, 1924 in action No. E. 29-33.

26. This stipulation in lieu of præcipe.

Dated September 25th, 1924.

Albert M. Austin, Solicitor for Plaintiff in each suit, 120 Broadway, New York City. Kenneth B. Halstead, Solicitor for Defendant United States Steel Corporation in each suit, #71 Broadway, New York City. Coudert Brothers, Solicitors for Defendants Public Trustee et al. in each suit, #2 Rector Street, New York City.

[fol. 230] IN UNITED STATES DISTRICT COURT

E. 28-340. E. 29-33

[Title omitted]

STIPULATION ON APPEAL RECORD

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled [fol. 231] matters as agreed on by the parties.

Dated September 30th, 1924.

Albert M. Austin, Solicitor for Plaintiff in both suits. Kenneth B. Halstead, Solicitor for Defendant United States Steel Corporation in both suits. Coudert Brothers, Solicitors for Defendant Public Trustee and the other defendants in both suits.

[fol. 232] IN UNITED STATES DISTRICT COURT

E. 28-340. E. 29-33

[Title omitted]

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matters as agreed on by the parties.

[fol. 233] In testimony whereof I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 30th day of September in the year of our Lord one thousand nine hundred and twenty-four and of the Independence of the said United States the one hundred and forty-ninth.

Alex. Gilchrist, Jr., Clerk. (Seal of District Court of the United States.

Endorsed on cover: File No. 30,641, 30,642. S. New York D. C. U. S. Term No. 676. Direction der Disconto-Gesellschaft, appellant, vs. United States Steel Corporation, Public Trustee, Egremont John Mills, et al., etc. Term No. 677. Bank fur Handel und Industrie, appellant, vs. United States Steel Corporation, Public Trustee, English Association of American Bond & Shareholders, Limited, et al. Filed October 1st, 1924. File No. 30,641, 30,642.

(42744)

127
Nos 676 + 677
TREATY SERIES. No. 658

TREATY

BETWEEN

THE UNITED STATES AND GERMANY

Restoring Friendly Relations

SIGNED AT BERLIN, AUGUST 25, 1921
RATIFICATION ADVISED BY THE SENATE, OCTOBER 18, 1921
RATIFIED BY THE PRESIDENT, OCTOBER 21, 1921
RATIFIED BY GERMANY, NOVEMBER 2, 1921
RATIFICATIONS EXCHANGED AT BERLIN, NOVEMBER 11, 1921
PROCLAIMED, NOVEMBER 14, 1921, AND
PARTS OF TREATY OF VERSAILLES CONCLUDED JUNE 28, 1919



WASHINGTON
GOVERNMENT PRINTING OFFICE
1922

TREATY SERIES. NO. 658

TREATY

OF

THE UNITED STATES AND GERMANY

Restoring Friendly Relations



WASHINGTON
GOVERNMENT PRINTING OFFICE

1921

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION

WHEREAS, by a Joint Resolution of Congress, approved March 3, 1921, it was declared that certain Acts of Congress, joint resolutions and proclamations should be construed as if the war between the United States of America and the Imperial German Government had ended, but certain acts of Congress and proclamations issued in pursuance thereof were excepted from the operation of the said resolution;

WHEREAS, by a Joint Resolution of Congress approved July 2, 1921, the state of war which was declared by the Joint Resolution of Congress approved April 6, 1917, to exist between the United States of America and the Imperial German Government was declared at an end;

WHEREAS, a treaty between the United States and Germany was signed at Berlin on August 25, 1921, to restore the friendly relations existing between the two nations prior to the outbreak of war, which treaty is word for word as follows:

The United States of America
and
Germany:

Die Vereinigten Staaten von Amerika
und
Deutschland:

Considering that the United States, acting in conjunction with its co-belligerents, entered into an Armistice with Germany on November 11, 1918, in order that a Treaty of Peace might be concluded;

Considering that the Treaty of Versailles was signed on June 28, 1919, and came into force according to the terms of its Article 440, but has not been ratified by the United States;

Considering that the Congress of the United States passed a Joint Resolution, approved by the President July 2, 1921, which reads in part as follows:

“RESOLVED BY THE
SENATE AND HOUSE OF
REPRESENTATIVES OF

In der Erwägung, daß die Vereinigten Staaten gemeinschaftlich mit ihren Mitkriegsführenden am 11. November 1918 einen Waffenstillstand mit Deutschland vereinbart haben, damit ein Friedensvertrag abgeschlossen werden könne;

In der Erwägung, daß der Vertrag von Versailles am 28. Juni 1919 unterzeichnet wurde und gemäß den Bestimmungen des Artikels 440 in Kraft getreten, aber von den Vereinigten Staaten nicht ratifiziert worden ist;

In der Erwägung, daß der Kongreß der Vereinigten Staaten einen gemeinsamen Beschluß gefaßt hat, der von dem Präsidenten am 2. Juli 1921 genehmigt worden ist und im Auszug wie folgt lautet:

„Beschlossen vom Senat
und dem Repräsentanten-
haus der Vereinigten

THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the state of war declared to exist between the Imperial German Government and the United States of America by the joint resolution of Congress approved April 6, 1917, is hereby declared at an end.

"Sec. 2. That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the treaty of Versailles, have been stipulated for its or their benefit; or to which it is entitled as one of the principal allied and associated powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise.

.

"Sec. 3. All property of the Imperial German Government, or its successor or successors, and of all German nationals, which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the

Staaten von Amerika, die zum Kongress versammelt sind, daß der durch den am 6. April 1917 genehmigten gemeinsamen Beschluß des Kongresses erklärte Kriegszustand zwischen der Kaiserlich Deutschen Regierung und den Vereinigten Staaten von Amerika hiermit für beendet erklärt wird.

"Sektion 2. Daß durch Abgabe dieser Erklärung und als ein Teil davon den Vereinigten Staaten von Amerika und ihren Staatsangehörigen jedwede und alle Rechte, Privilegien, Entschädigungen, Reparationen oder Vorteile einschließlich des Rechts, sie zwangsweise durchzuführen, ausdrücklich vorbehalten werden, auf welche die Vereinigten Staaten von Amerika oder ihre Staatsangehörigen nach den am 11. November 1918 unterzeichneten Waffenstillstandsbedingungen sowie irgendwelchen Erweiterungen oder Abänderungen derselben einen Anspruch erworben haben; oder die von den Vereinigten Staaten von Amerika infolge ihrer Beteiligung am Kriege erworben worden sind oder sich in ihrem Besitz befinden; oder auf die ihre Staatsangehörigen dadurch rechtmäßig Anspruch erworben haben; oder die in dem Vertrage von Versailles zu ihren oder ihrer Staatsangehörigen Gunsten festgesetzt worden sind; oder auf die sie als eine der alliierten und assoziierten Hauptmächte oder kraft irgendeines vom Kongress beschlossenen Gesetzes oder sonstwie einen Anspruch haben.

"Sektion 3. Alles Eigentum der Kaiserlich Deutschen Regierung oder ihres Nachfolgers oder ihrer Nachfolger und das Eigentum aller deutschen Staatsangehörigen, das sich am 6. April 1917 im Besitz oder in der Gewalt der Vereinigten Staaten von Amerika oder eines ihrer Beamten, Vertreter oder Angestellten befand oder

United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, and all property of the Imperial and Royal Austro-Hungarian Government, or its successor or successors, and of all Austro-Hungarian nationals which was on December 7, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or any of its officers, agents, or employees, from any source or by any agency whatsoever, shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively made suitable provision for the satisfaction of all claims against said Governments respectively, of all persons, where-soever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities or

seit diesem Tage in deren Besitz oder Gewalt gelangt oder Gegenstand einer Forderung seitens derselben gewesen ist, gleichviel aus welchem Ursprung oder aus welcher Tätigkeit, und alles Eigentum der K. u. K. Österreichisch-Ungarischen Regierung oder ihres Nachfolgers oder ihrer Nachfolger and aller österreichisch-ungarischen Staatsangehörigen, das sich am 7. Dezember 1917 im Besitz oder in der Gewalt der Vereinigten Staaten von Amerika oder eines ihrer Beamten, Vertreter oder Angestellten befand oder seit diesem Tage in deren Besitz oder Gewalt gelangt oder Gegenstand einer Forderung seitens derselben gewesen ist, gleichviel aus welchem Ursprung oder aus welcher Tätigkeit, soll von den Vereinigten Staaten von Amerika zurückbehalten und darüber keine Verfügung getroffen werden, soweit nicht gesetzlich darüber bereits verfügt ist oder im einzelnen künftig darüber verfügt wird. Dies gilt bis zu dem Zeitpunkt, wo die Kaiserlich Deutsche Regierung beziehungsweise die K. u. K. Österreichisch-Ungarische Regierung oder ihr Nachfolger oder ihre Nachfolger angemessene Vorkehrungen zur Befriedigung aller Forderungen gegen eine der genannten Regierungen seitens aller Personen ohne Rücksicht auf ihren Wohnsitz getroffen haben, die zu den Vereinigten Staaten von Amerika in einem dauernden Treuverhältnis stehen, und die durch Handlungen der Kaiserlich Deutschen Regierung oder ihrer Vertreter oder der K. u. K. Österreichisch-Ungarischen Regierung oder deren Vertreter seit dem 31. Juli 1914 Verlust, Nachteil oder Schaden an ihrer Person oder ihrem Eigentum unmittelbar oder mittelbar, sei es durch den Besitz von Anteilen deutscher, österreichisch-ungarischer, amerikanischer oder anderer Körperschaften oder infolge von Feindseligkeiten oder irgendwelchen Kriegshandlungen

of any operations of war, or otherwise, and also shall have granted to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce and industrial property rights, and until the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively confirmed to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals or the Imperial and Royal Austro-Hungarian Government or Austro-Hungarian nationals, and shall have waived any and all pecuniary claims against the United States of America."

Being desirous of restoring the friendly relations existing between the two Nations prior to the outbreak of war:

Have for that purpose appointed their plenipotentiaries:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

ELLIS LORING DRESEL, Commissioner of the United States of America to Germany,

and

THE PRESIDENT OF THE GERMAN EMPIRE

Dr. FRIEDRICH ROSEN, Minister for Foreign Affairs,

oder auf andere Weise erlitten haben, ferner solchen Personen, die zu den Vereinigten Staaten von Amerika in einem dauernden Treuverhältnis stehen, das Meistbegünstigungsrecht in allen Angelegenheiten, betreffend Niederlassung, Geschäftsbetrieb, Berufsausübung, Verkehr, Schifffahrt, Handel und gewerbliche Schutzrechte, zugestanden haben, einerlei, ob dieses Recht auf die Nationalität abgestellt oder sonstwie bestimmt ist; endlich bis die Kaiserlich Deutsche Regierung beziehungsweise die K. u. K. Österreichisch-Ungarische Regierung oder ihr Nachfolger oder ihre Nachfolger den Vereinigten Staaten von Amerika gegenüber alle von diesen während des Krieges auferlegten oder verfügten Strafgelder, Verwirkungen, Bußen und Beschlagnahmen bestätigt haben, gleichviel ob diese Eigentum der Kaiserlich Deutschen Regierung oder deutscher Staatsangehöriger oder der K. u. K. Österreichisch-Ungarischen Regierung oder österreichisch-ungarischer Staatsangehöriger betreffen, und bis sie auf allen und jeden Geldanspruch gegen die Vereinigten Staaten von Amerika verzichtet haben."

In dem Wunsche, die freundschaftlichen Beziehungen, die vor Ausbruch des Krieges zwischen den beiden Nationen bestanden haben, wieder herzustellen, Haben zu diesem Zwecke zu ihren Bevollmächtigten bestellt:

der Präsident der Vereinigten Staaten von Amerika

den Commissioner der Vereinigten Staaten von Amerika in Deutschland, Herrn Ellis Loring Dresel

und

der Präsident des Deutschen Reichs

den Reichsminister des Auswärtigen, Herrn Dr. Friedrich Rosen.

Who, having communicated their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I.

Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations or advantages specified in the aforesaid Joint Resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such Treaty has not been ratified by the United States.

ARTICLE II.

With a view to defining more particularly the obligations of Germany under the foregoing Article with respect to certain provisions in the Treaty of Versailles, it is understood and agreed between the High Contracting Parties:

(1) That the rights and advantages stipulated in that Treaty for the benefit of the United States, which it is intended the United States shall have and enjoy, are those defined in Section 1, of Part IV, and Parts V, VI, VIII, IX, X, XI, XII, XIV, and XV.

The United States in availing itself of the rights and advantages stipulated in the provisions of that Treaty mentioned in this paragraph will do so in a manner consistent with the rights accorded to Germany under such provisions.

(2) That the United States shall not be bound by the pro-

Diese haben nach Austausch ihrer für gut und richtig befundenen Vollmachten folgendes vereinbart:

Artikel I.

Deutschland verpflichtet sich, den Vereinigten Staaten zu gewähren und die Vereinigten Staaten sollen besitzen und genießen alle Rechte, Privilegien, Entschädigungen, Reparationen oder Vorteile, die in dem vorgenannten gemeinschaftlichen Beschlusse des Kongresses der Vereinigten Staaten vom 2. Juli 1921 näher bezeichnet sind, mit Einschluß aller Rechte und Vorteile, die zugunsten der Vereinigten Staaten in dem Vertrag von Versailles festgesetzt sind und die Vereinigten Staaten in vollem Umfange genießen sollen, ungeachtet der Tatsache, daß dieser Vertrag von den Vereinigten Staaten nicht ratifiziert worden ist.

Artikel II.

In der Absicht, die Verpflichtungen Deutschlands gemäß dem vorübergehenden Artikel mit Beziehung auf gewisse Bestimmungen des Vertrags von Versailles näher zu bestimmen, besteht Einverständnis und Einigung zwischen den Hohen Vertragsschließenden Teilen darüber:

1. daß die Rechte und Vorteile, die in jenem Vertrage zugunsten der Vereinigten Staaten festgesetzt sind und die die Vereinigten Staaten besitzen und genießen sollen, diejenigen sind, die in Abschnitt 1 des Teiles IV und in den Teilen V, VI, VIII, IX, X, XI, XII, XIV und XV aufgeführt sind.

Wenn die Vereinigten Staaten die in den Bestimmungen jenes Vertrags festgesetzten und in diesem Paragraphen erwähnten Rechte und Vorteile für sich in Anspruch nehmen, werden sie dies in einer Weise tun, die mit den Deutschland nach diesen Bestimmungen zustehenden Rechten im Einklang steht;

2. daß die Vereinigten Staaten nicht an die Bestimmungen des Teiles I

visions of Part I of that Treaty, nor by any provisions of that Treaty including those mentioned in Paragraph (1) of this Article, which relate to the Covenant of the League of Nations, nor shall the United States be bound by any action taken by the League of Nations, or by the Council or by the Assembly thereof, unless the United States shall expressly give its assent to such action.

(3) That the United States assumes no obligations under or with respect to the provisions of Part II, Part III, Sections 2 to 8 inclusive of Part IV, and Part XIII of that Treaty.

(4) That, while the United States is privileged to participate in the Reparation Commission, according to the terms of Part VIII of that Treaty, and in any other Commission established under the Treaty or under any agreement supplemental thereto, the United States is not bound to participate in any such commission unless it shall elect to do so.

(5) That the periods of time to which reference is made in Article 440 of the Treaty of Versailles shall run, with respect to any act or election on the part of the United States, from the date of the coming into force of the present Treaty.

ARTICLE III.

The present Treaty shall be ratified in accordance with the constitutional forms of the High Contracting Parties and shall take effect immediately on the exchange of ratifications which shall take place as soon as possible at Berlin.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty and have hereto affixed their seals.

jenes Vertrags noch an irgendwelche Bestimmungen jenes Vertrags, mit Einfluß der in Nr. 1 dieses Artikels erwähnten, gebunden sein sollen, die sich auf die Völkerbundsatzung beziehen, daß auch die Vereinigten Staaten durch keine Maßnahme des Völkerbundes, des Völkerbundsrates oder der Völkerbundsversammlung gebunden sein sollen, es sei denn, daß die Vereinigten Staaten ausdrücklich ihre Zustimmung zu einer solchen Maßnahme geben;

3. daß die Vereinigten Staaten keine Verpflichtungen aus den Bestimmungen des Teiles II, Teiles III, der Abschnitte 2 bis einschließlich 8 des Teiles IV und des Teiles XIII des bezeichneten Vertrags oder mit Beziehung auf diese Bestimmungen übernehmen;

4. daß, während die Vereinigten Staaten berechtigt sind, an der Reparationskommission gemäß den Bestimmungen des Teiles VIII jenes Vertrags und an irgendeiner anderen auf Grund des Vertrags oder eines ergänzenden Übereinkommens eingesetzten Kommission teilzunehmen, die Vereinigten Staaten nicht verpflichtet sind, sich an irgendeiner solchen Kommission zu beteiligen, es sei denn, daß sie dies wollen;

5. daß die im Artikel 440 des Vertrags von Versailles erwähnten Fristen, soweit sie sich auf eine Maßnahme oder Entschließung der Vereinigten Staaten beziehen, mit dem Inkrafttreten des gegenwärtigen Vertrags zu laufen beginnen sollen.

Artikel III.

Der gegenwärtige Vertrag soll gemäß den verfassungsrechtlichen Formen der Hohen Vertragsschließenden Teile ratifiziert werden und soll sofort mit Austausch der Ratifikationsurkunden, der so bald als möglich in Berlin stattfinden wird, in Kraft treten.

Zu Urkund dessen haben die beiderseitigen Bevollmächtigten diesen Vertrag unterzeichnet und ihre Siegel beigefügt.

Done in duplicate in Berlin this Ausgefertigt in doppelter Urschrift
 twenty-fifth day of August 1921. in Berlin am 25. August 1921.
 [SEAL.] ELLIS LORING DRESEL [SEAL.] ELLIS LORING DRESEL
 [SEAL.] ROSEN [SEAL.] ROSEN

AND WHEREAS, the said treaty has been duly ratified on both parts, and the ratifications of the two countries were exchanged at Berlin on November 11, 1921;

NOW THEREFORE be it known that I, Warren G. Harding, President of the United States of America, hereby proclaim that the war between the United States and Germany terminated on July 2, 1921, and cause the said treaty to be made public to the end that every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this fourteenth day of November One Thousand Nine Hundred and Twenty-one and of the [SEAL.] Independence of the United States of America the One Hundred and Forty-sixth.

WARREN G. HARDING

By the President:

CHARLES E. HUGHES
Secretary of State.

[RATIFICATION.]

WARREN G. HARDING,

President of the United States of America,

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That whereas a Treaty between the United States of America and Germany to restore the friendly relations existing between the two nations prior to the outbreak of war, was concluded and signed by their respective plenipotentiaries at Berlin on August 25, 1921, the original of which Treaty, in the English and German languages, is hereto annexed:

And Whereas, the Senate of the United States, by their resolution of October 18, 1921, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said Treaty, subject to the understanding, made a part of the resolution of ratification, "that the United States shall not be represented or participate in any body, agency or commission, nor shall any person represent the United States as a member of any body, agency or commission in which the United States is authorized to participate by this Treaty, unless and until an Act of the Congress of the United States shall provide for such representation or participation"; and subject to the further understanding, made a part of the resolution of ratification, "that the rights and advantages which the United States is entitled to have and enjoy under this Treaty embrace the rights and advantages of nationals of the United States specified in the Joint Resolution or in the provisions of the Treaty of Versailles to which this Treaty refers";

NOW, therefore, be it known that I, Warren G. Harding, President of the United States of America, having seen and considered the said Treaty, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the understandings hereinabove recited.

IN TESTIMONY WHEREOF, I have caused the seal of the United States to be hereunto affixed.

Given under my hand at the City of Washington, the twenty-first day of October, in the year of our Lord one thousand
[SEAL.] nine hundred and twenty-one, and of the Independence of the United States of America the one hundred and forty-sixth.

WARREN G. HARDING

By the President:

CHARLES E. HUGHES

Secretary of State.

SECTION I OF PART IV AND PARTS V, VI, VIII, IX, X,
XI, XII, XIV, AND XV

OF THE

TREATY OF VERSAILLES

Concluded June 28, 1919.

PART IV.

SECTION I.

GERMAN COLONIES.

ARTICLE 119.

Germany renounces in favour of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions.

ARTICLE 120.

All movable and immovable property in such territories belonging to the German Empire or to any German State shall pass to the Government exercising authority over such territories, on the terms laid down in Article 257 of Part IX (Financial Clauses) of the present Treaty. The decision of the local courts in any dispute as to the nature of such property shall be final.

ARTICLE 121.

The provisions of Sections I and IV of Part X (Economic Clauses) of the present Treaty shall apply in the case of these territories whatever be the form of Government adopted for them.

ARTICLE 122.

The Government exercising authority over such territories may make such provisions as it thinks fit with reference to the repatriation from them of German nationals and to the conditions upon which German subjects of European origin shall, or shall not, be allowed to reside, hold property, trade or exercise a profession in them.

ARTICLE 123.

The provisions of Article 260 of Part IX (Financial Clauses) of the present Treaty shall apply in the case of all agreements concluded with German nationals for the construction or exploitation of public works in the German oversea possessions, as well as any sub-concessions or contracts resulting therefrom which may have been made to or with such nationals.

ARTICLE 124.

Germany hereby undertakes to pay, in accordance with the estimate to be presented by the French Government and approved by the Reparation Commission, reparation for damage suffered by French nationals in the Cameroons or the frontier zone by reason of the acts of the German civil and military authorities and of German private individuals during the period from January 1, 1900, to August 1, 1914.

ARTICLE 125.

Germany renounces all rights under the Conventions and Agreements with France of November 4, 1911, and September 28, 1912, relating to Equatorial Africa. She undertakes to pay to the French Government, in accordance with the estimate to be presented by that Government and approved by the Reparation Commission, all the deposits, credits, advances, etc., effected by virtue of these instruments in favour of Germany.

ARTICLE 126.

Germany undertakes to accept and observe the agreements made or to be made by the Allied and Associated Powers or some of them with any other Power with regard to the trade in arms and spirits, and to the matters dealt with in the General Act of Berlin of February 26, 1885, the General Act of Brussels of July 2, 1890, and the conventions completing or modifying the same.

ARTICLE 127.

The native inhabitants of the former German oversea possessions shall be entitled to the diplomatic protection of the Governments exercising authority over those territories.

PART V.

MILITARY, NAVAL AND AIR CLAUSES.

In order to render possible the initiation of a general limitation of the armaments of all nations, Germany undertakes strictly to observe the military, naval and air clauses which follow.

SECTION I.

MILITARY CLAUSES.

CHAPTER I.

EFFECTIVES AND CADRES OF THE GERMAN ARMY.

ARTICLE 159.

The German military forces shall be demobilized and reduced as prescribed hereinafter.

ARTICLE 160.

(1) By a date which must not be later than March 31, 1920, the German Army must not comprise more than seven divisions of infantry and three divisions of cavalry.

After that date the total number of effectives in the Army of the States constituting Germany must not exceed one hundred thousand men, including officers and establishments of depots. The Army shall be devoted exclusively to the maintenance of order within the territory and to the control of the frontiers.

The total effective strength of officers, including the personnel of staffs, whatever their composition, must not exceed four thousand.

(2) Divisions and Army Corps headquarters staffs shall be organized in accordance with Table No. I annexed to this Section.

The number and strengths of the units of infantry, artillery, engineers, technical services and troops laid down in the aforesaid Table constitute maxima which must not be exceeded.

The following units may each have their own depot:

- An Infantry regiment;
- A Cavalry regiment;
- A regiment of Field Artillery;
- A battalion of Pioneers.

(3) The divisions must not be grouped under more than two army corps headquarters staffs.

The maintenance or formation of forces differently grouped or of other organisations for the command of troops or for preparation for war is forbidden.

The Great German General Staff and all similar organisations shall be dissolved and may not be reconstituted in any form.

The officers, or persons in the position of officers, in the Ministries of War in the different States in Germany and in the Administrations attached to them, must not exceed three hundred in number and are included in the maximum strength of four thousand laid down in the third sub-paragraph of paragraph (1) of this Article.

ARTICLE 161.

Army administrative services consisting of civilian personnel not included in the number of effectives prescribed by the present Treaty will have such personnel reduced in each class to one-tenth of that laid down in the Budget of 1913.

ARTICLE 102.

The number of employees or officials of the German States, such as customs officers, forest guards and coastguards, shall not exceed that of the employees or officials functioning in these capacities in 1913.

The number of gendarmes and employees or officials of the local or municipal police may only be increased to an extent corresponding to the increase of population since 1913 in the districts or municipalities in which they are employed.

These employees and officials may not be assembled for military training.

ARTICLE 103.

The reduction of the strength of the German military forces as provided for in Article 160 may be effected gradually in the following manner:

Within three months from the coming into force of the present Treaty the total number of effectives must be reduced to 200,000 and the number of units must not exceed twice the number of those laid down in Article 160.

At the expiration of this period, and at the end of each subsequent period of three months, a Conference of military experts of the Principal Allied and Associated Powers will fix the reductions to be made in the ensuing three months, so that by March 31, 1920, at the latest the total number of German effectives does not exceed the maximum number of 100,000 men laid down in Article 160. In these successive reductions the same ratio between the number of officers and of men, and between the various kinds of units, shall be maintained as is laid down in that Article.

CHAPTER II.

ARMAMENT, MUNITIONS AND MATERIAL.

ARTICLE 104.

Up till the time at which Germany is admitted as a member of the League of Nations the German Army must not possess an armament greater than the amounts fixed in Table No. II annexed to this Section, with the exception of an optional increase not exceeding one-twentyfifth part for small arms and one-fiftieth part for guns, which shall be exclusively used to provide for such eventual replacements as may be necessary.

Germany agrees that after she has become a member of the League of Nations the armaments fixed in the said Table shall remain in force until they are modified by the Council of the League. Furthermore she hereby agrees strictly to observe the decisions of the Council of the League on this subject.

ARTICLE 105.

The maximum number of guns, machine guns, trench-mortars, rifles and the amount of ammunition and equipment which Ger-

many is allowed to maintain during the period between the coming into force of the present Treaty and the date of March 31, 1920, referred to in Article 160, shall bear the same proportion to the amount authorized in Table No III annexed to this Section as the strength of the German Army as reduced from time to time in accordance with Article 163 bears to the strength permitted under Article 160.

ARTICLE 166.

At the date of March 31, 1920, the stock of munitions which the German Army may have at its disposal shall not exceed the amounts fixed in Table No. III annexed to this Section.

Within the same period the German Government will store these stocks at points to be notified to the Governments of the Principal Allied and Associated Powers. The German Government is forbidden to establish any other stocks, depots or reserves of munitions.

ARTICLE 167.

The number and calibre of the guns constituting at the date of the coming into force of the present Treaty the armament of the fortified works, fortresses, and any land or coast forts which Germany is allowed to retain must be notified immediately by the German Government to the Governments of the Principal Allied and Associated Powers, and will constitute maximum amounts which may not be exceeded.

Within two months from the coming into force of the present Treaty, the maximum stock of ammunition for these guns will be reduced to, and maintained at, the following uniform rates:—fifteen hundred rounds per piece for those the calibre of which is 10.5 cm. and under: five hundred rounds per piece for those of higher calibre.

ARTICLE 168.

The manufacture of arms, munitions, or any war material, shall only be carried out in factories or works the location of which shall be communicated to and approved by the Governments of the Principal Allied and Associated Powers, and the number of which they retain the right to restrict.

Within three months from the coming into force of the present Treaty, all other establishments for the manufacture, preparation, storage or design of arms, munitions, or any war material whatever shall be closed down. The same applies to all arsenals except those used as depots for the authorised stocks of munitions. Within the same period the personnel of these arsenals will be dismissed.

ARTICLE 169.

Within two months from the coming into force of the present Treaty German arms, munitions and war material, including anti-aircraft material, existing in Germany in excess of the quantities allowed, must be surrendered to the Governments of the Principal Allied and Associated Powers to be destroyed or rendered useless.

This will also apply to any special plant intended for the manufacture of military material, except such as may be recognised as necessary for equipping the authorised strength of the German army.

The surrender in question will be effected at such points in German territory as may be selected by the said Governments.

Within the same period arms, munitions and war material, including anti-aircraft material, of origin other than German, in whatever state they may be, will be delivered to the said Governments, who will decide as to their disposal.

Arms and munitions which on account of the successive reductions in the strength of the German army become in excess of the amounts authorized by Tables II and III annexed to this Section must be handed over in the manner laid down above within such periods as may be decided by the Conferences referred to in Article 163.

ARTICLE 170.

Importation into Germany of arms, munitions and war material of every kind shall be strictly prohibited.

The same applies to the manufacture for, and export to, foreign countries of arms, munitions and war material of every kind.

ARTICLE 171.

The use of asphyxiating, poisonous or other gases and all analogous liquids, materials or devices being prohibited, their manufacture and importation are strictly forbidden in Germany.

The same applies to materials specially intended for the manufacture, storage and use of the said products or devices.

The manufacture and the importation into Germany of armoured cars, tanks and all similar constructions suitable for use in war are also prohibited.

ARTICLE 172.

Within a period of three months from the coming into force of the present Treaty, the German Government will disclose to the Governments of the Principal Allied and Associated Powers the nature and mode of manufacture of all explosives, toxic substances or other like chemical preparations used by them in the war or prepared by them for the purpose of being so used.

CHAPTER III.

RECRUITING AND MILITARY TRAINING.

ARTICLE 173.

Universal compulsory military service shall be abolished in Germany.

The German Army may only be constituted and recruited by means of voluntary enlistment.

ARTICLE 174.

The period of enlistment for non-commissioned officers and privates must be twelve consecutive years.

The number of men discharged for any reason before the expiration of their term of enlistment must not exceed in any year five per cent. of the total effectives fixed by the second sub-paragraph of paragraph (1) of Article 160 of the present Treaty.

ARTICLE 175.

The officers who are retained in the Army must undertake the obligation to serve in it up to the age of forty-five years at least.

Officers newly appointed must undertake to serve on the active list for twenty-five consecutive years at least.

Officers who have previously belonged to any formations whatever of the Army, and who are not retained in the units allowed to be maintained, must not take part in any military exercise whether theoretical or practical, and will not be under any military obligations whatever.

The number of officers discharged for any reason before the expiration of their term of service must not exceed in any year five per cent. of the total effectives of officers provided for in the third sub-paragraph of paragraph (1) of Article 160 of the present Treaty.

ARTICLE 176.

On the expiration of two months from the coming into force of the present Treaty there must only exist in Germany the number of military schools which is absolutely indispensable for the recruitment of the officers of the units allowed. These schools will be exclusively intended for the recruitment of officers of each arm, in the proportion of one school per arm.

The number of students admitted to attend the courses of the said schools will be strictly in proportion to the vacancies to be filled in the cadres of officers. The students and the cadres will be reckoned in the effectives fixed by the second and third sub-paragraphs of paragraph (1) of Article 160 of the present Treaty.

Consequently, and during the period fixed above, all military academies or similar institutions in Germany, as well as the different military schools for officers, student officers (*Aspiranten*), cadets, non-commissioned officers or student non-commissioned officers (*Aspiranten*), other than the schools above provided for, will be abolished.

ARTICLE 177.

Educational establishments, the universities, societies of discharged soldiers, shooting or touring clubs and, generally speaking, associations of every description, whatever be the age of their members, must not occupy themselves with any military matters.

In particular they will be forbidden to instruct or exercise their members, or to allow them to be instructed or exercised, in the profession or use of arms.

These societies, associations, educational establishments and universities must have no connection with the Ministries of War or any other military authority.

ARTICLE 178.

All measures of mobilization or appertaining to mobilization are forbidden.

In no case must formations, administrative services or General Staffs include supplementary cadres.

ARTICLE 179.

Germany agrees, from the coming into force of the present Treaty, not to accredit nor to send to any foreign country any military, naval or air mission, nor to allow any such mission to leave her territory, and Germany further agrees to take appropriate measures to prevent German nationals from leaving her territory to become enrolled in the Army, Navy or Air service of any foreign Power, or to be attached to such Army, Navy or Air service for the purpose of assisting in the military, naval or air training thereof, or otherwise for the purpose of giving military, naval or air instruction in any foreign country.

The Allied and Associated Powers agree, so far as they are concerned, from the coming into force of the present Treaty, not to enrol in nor to attach to their armies or naval or air forces any German national for the purpose of assisting in the military training of such armies or naval or air forces, or otherwise to employ any such German national as military, naval or aeronautic instructor.

The present provision does not, however, affect the right of France to recruit for the Foreign Legion in accordance with French military laws and regulations.

CHAPTER IV.

FORTIFICATIONS.

ARTICLE 180.

All fortified works, fortresses and field works situated in German territory to the west of a line drawn fifty kilometres to the east of the Rhine shall be disarmed and dismantled.

Within a period of two months from the coming into force of the present Treaty such of the above fortified works, fortresses and field works as are situated in territory not occupied by Allied and Associated troops shall be disarmed, and within a further period of four months they shall be dismantled. Those which are situated in territory occupied by Allied and Associated troops shall be disarmed and dismantled within such periods as may be fixed by the Allied High Command.

The construction of any new fortification, whatever its nature and importance, is forbidden in the zone referred to in the first paragraph above.

The system of fortified works of the southern and eastern frontiers of Germany shall be maintained in its existing state.

TABLE NO. I.

STATE AND ESTABLISHMENT OF ARMY CORPS HEADQUARTERS STAFFS AND OF INFANTRY AND CAVALRY DIVISIONS.

These tabular statements do not form a fixed establishment to be imposed on Germany, but the figures contained in them (number of units and strengths) represent maximum figures, which should not in any case be exceeded.

I.—ARMY CORPS HEADQUARTERS STAFFS.

Unit.	Maximum No. authorised.	Maximum strengths of each unit.	
		Officers.	N.C.O.'s and Men.
Army Corps Headquarters Staff.....	2	30	150
Total for Headquarters Staffs.....		60	300

II.—ESTABLISHMENT OF AN INFANTRY DIVISION.

Unit.	Maximum No. of such units in a single division.	Maximum strengths of each unit.	
		Officers.	N. C. O.'s and men.
Headquarters of an infantry division.....	1	25	70
Headquarters of divisional infantry.....	1	4	30
Headquarters of divisional artillery.....	1	4	30
Regiment of infantry..... (Each regiment comprises 3 battalions of infantry. Each battalion comprises 3 companies of infantry and 1 machine-gun company.)	3	70	2,300
Trench mortar company.....	3	6	150
Divisional squadron.....	1	6	150
Field artillery regiment..... (Each regiment comprises 3 groups of artillery. Each group comprises 3 batteries.)	1	85	1,300
Pioneer battalion..... (This battalion comprises 2 companies of pioneers, 1 pontoon detachment, 1 searchlight section.)	1	12	400
Signal detachment..... (This detachment comprises 1 telephone detachment, 1 listening section, 1 carrier pigeon section.)	1	12	300
Divisional medical service.....	1	20	400
Parks and convoys.....		14	800
Total for infantry division.....		410	10,830

III.—ESTABLISHMENT OF A CAVALRY DIVISION.

Unit.	Maximum No. of such units in a single division.	Maximum strengths of each unit.	
		Officers.	N. C. O.'s and men.
Headquarters of a cavalry division.....	1	15	50
Cavalry regiment..... (Each regiment comprises 4 squadrons.)	6	40	800
Horse artillery group (3 batteries).....	1	20	400
Total for cavalry division.....		275	5,250

TABLE NO. II.

TABULAR STATEMENT OF ARMAMENT ESTABLISHMENT FOR A MAXIMUM OF SEVEN INFANTRY DIVISIONS, THREE CAVALRY DIVISIONS, AND TWO ARMY-CORPS HEAD-QUARTERS STAFFS.

Material.	Infantry division.	For 7 infantry divisions.	Cavalry division.	For 3 cavalry divisions.	Two army corps head-quarters staffs.	Total of columns 2, 4, and 5.
	(1)	(2)	(3)	(4)	(5)	(6)
Rifles.....	12,000	84,000			This establishment must be drawn from the increased armaments of the divisional infantry.	84,000
Carbines.....	108	756	6,000	18,000		18,000
Heavy machine guns.....	162	1,134	12	36		792
Light machine guns.....	9	63				1,134
Medium trench mortars.....	27	189				63
Light trench mortars.....	24	168	12	36		189
7.7 cm. guns.....	12	84				204
10.5 cm. howitzers.....						81

TABLE NO. III.

MAXIMUM STOCKS AUTHORISED.

Material.	Maximum number of Arms authorised.	Establishment per unit.	Maximum totals.
		Rounds.	Rounds.
Rifles.....	84,000	400	40,800,000
Carbines.....	18,000		
Heavy machine guns.....	792	8,000	15,408,000
Light machine guns.....	1,134		
Medium trench mortars.....	63	400	25,200
Light trench mortars.....	189	800	151,200
Field artillery:			
7.7 cm. guns.....	204	1,000	204,000
10.5 cm. howitzers.....	84	800	67,200

SECTION II.

NAVAL CLAUSES.

ARTICLE 181.

After the expiration of a period of two months from the coming into force of the present Treaty the German naval forces in commission must not exceed:

6 battleships of the *Deutschland* or *Lothringen* type,

6 light cruisers,

12 destroyers,

12 torpedo boats,

or an equal number of ships constructed to replace them as provided in Article 190.

No submarines are to be included.

All other warships, except where there is provision to the contrary in the present Treaty, must be placed in reserve or devoted to commercial purposes.

ARTICLE 182.

Until the completion of the minesweeping prescribed by Article 193 Germany will keep in commission such number of minesweeping vessels as may be fixed by the Governments of the Principal Allied and Associated Powers.

ARTICLE 183.

After the expiration of a period of two months from the coming into force of the present Treaty the total personnel of the German Navy, including the manning of the fleet, coast defences, signal stations, administration and other land services, must not exceed fifteen thousand, including officers and men of all grades and corps.

The total strength of officers and warrant officers must not exceed fifteen hundred.

Within two months from the coming into force of the present Treaty the personnel in excess of the above strength shall be demobilized.

No naval or military corps or reserve force in connection with the Navy may be organised in Germany without being included in the above strength.

ARTICLE 184.

From the date of the coming into force of the present Treaty all the German surface warships which are not in German ports cease to belong to Germany, who renounces all rights over them.

Vessels which, in compliance with the Armistice of November 11, 1918, are now interned in the ports of the Allied and Associated Powers are declared to be finally surrendered.

Vessels which are now interned in neutral ports will be there surrendered to the Governments of the Principal Allied and Associated Powers. The German Government must address a notification to that effect to the neutral Powers on the coming into force of the present Treaty.

ARTICLE 185.

Within a period of two months from the coming into force of the present Treaty the German surface warships enumerated below will be surrendered to the Governments of the Principal Allied and Associated Powers in such Allied ports as the said Powers may direct.

These warships will have been disarmed as provided in Article XXIII of the Armistice of November 11, 1918. Nevertheless they must have all their guns on board.

BATTLESHIPS.

Oldenburg.
Thuringen.
Ostfriesland.
Helgoland.

Posen.
Westfalen.
Rheinland.
Nassau.

LIGHT CRUISERS.

Stettin.
Danzig.
München.
Lübeck.

Stralsund.
Augsburg.
Kolberg.
Stuttgart.

and, in addition, forty-two modern destroyers and fifty modern torpedo boats, as chosen by the Governments of the Principal Allied and Associated Powers.

ARTICLE 186.

On the coming into force of the present Treaty the German Government must undertake, under the supervision of the Governments of the Principal Allied and Associated Powers, the breaking-up of all the German surface warships now under construction.

ARTICLE 187.

The German auxiliary cruisers and fleet auxiliaries enumerated below will be disarmed and treated as merchant ships.

INTERNED IN NEUTRAL COUNTRIES.

Berlin.
Santa Fé.

Seydlitz.
Yorck.

IN GERMANY:

Ammon.
Answald.
Bosnia.
Cordoba.
Cassel.
Dania.
Rio Negro.
Rio Pardo.
Santa Cruz.
Schwaben.
Solingen.
Steigerwald.
Franken.
Gundomar.

Fürst Bülow.
Gertrud.
Kigoma.
Rugia.
Santa Elena.
Schleswig.
Möwe.
Sierra Ventana.
Chemnitz.
Emil Georg von Strauss.
Habsburg.
Meteor.
Waltraute.
Scharnhorst.

ARTICLE 188.

On the expiration of one month from the coming into force of the present Treaty all German submarines, submarine salvage vessels and docks for submarines, including the tubular dock, must have been handed over to the Governments of the Principal Allied and Associated Powers.

Such of these submarines, vessels and docks as are considered by the said Governments to be fit to proceed under their own power or

to be towed shall be taken by the German Government into such Allied ports as have been indicated.

The remainder, and also those in course of construction, shall be broken up entirely by the German Government under the supervision of the said Governments. The breaking-up must be completed within three months at the most after the coming into force of the present Treaty.

ARTICLE 189.

Articles, machinery and material arising from the breaking-up of German warships of all kinds, whether surface vessels or submarines, may not be used except for purely industrial or commercial purposes.

They may not be sold or disposed of to foreign countries.

ARTICLE 190.

Germany is forbidden to construct or acquire any warships other than those intended to replace the units in commission provided for in Article 181 of the present Treaty.

The warships intended for replacement purposes as above shall not exceed the following displacement:

Armoured ships-----	10,000 tons,
Light cruisers-----	6,000 tons,
Destroyers-----	800 tons,
Torpedo boats-----	200 tons.

Except where a ship has been lost, units of the different classes shall only be replaced at the end of a period of twenty years in the case of battleships and cruisers, and fifteen years in the case of destroyers and torpedo boats, counting from the launching of the ship.

ARTICLE 191.

The construction or acquisition of any submarine, even for commercial purposes, shall be forbidden in Germany.

ARTICLE 192.

The warships in commission of the German fleet must have on board or in reserve only the allowance of arms, munitions and war material fixed by the Principal Allied and Associated Powers.

Within a month from the fixing of the quantities as above, arms, munitions and war material of all kinds, including mines and torpedoes, now in the hands of the German Government and in excess of the said quantities, shall be surrendered to the Governments of the said Powers at places to be indicated by them. Such arms, munitions and war material will be destroyed or rendered useless.

All other stocks, depots or reserves of arms, munitions or naval war material of all kinds are forbidden.

The manufacture of these articles in German territory for, and their export to, foreign countries shall be forbidden.

ARTICLE 193.

On the coming into force of the present Treaty Germany will forthwith sweep up the mines in the following areas in the North Sea to the eastward of longitude $4^{\circ} 00'$ E. of Greenwich:

(1) Between parallels of latitude $53^{\circ} 00'$ N. and $59^{\circ} 00'$ N.; (2) To the northward of latitude $60^{\circ} 30'$ N.

Germany must keep these areas free from mines.

Germany must also sweep and keep free from mines such areas in the Baltic as may ultimately be notified by the Governments of the Principal Allied and Associated Powers.

ARTICLE 194.

The personnel of the German Navy shall be recruited entirely by voluntary engagements entered into for a minimum period of twenty-five consecutive years for officers and warrant officers; twelve consecutive years for petty officers and men.

The number engaged to replace those discharged for any reason before the expiration of their term of service must not exceed five per cent. per annum of the totals laid down in this Section (Article 183).

The personnel discharged from the Navy must not receive any kind of naval or military training or undertake any further service in the Navy or Army.

Officers belonging to the German Navy and not demobilised must engage to serve till the age of forty-five, unless discharged for sufficient reasons.

No officer or man of the German mercantile marine shall receive any training in the Navy.

ARTICLE 195.

In order to ensure free passage into the Baltic to all nations, Germany shall not erect any fortifications in the area comprised between latitudes $55^{\circ} 27'$ N. and $54^{\circ} 00'$ N. and longitudes $9^{\circ} 00'$ E. and $16^{\circ} 00'$ E. of the meridian of Greenwich, nor instal any guns commanding the maritime routes between the North Sea and the Baltic. The fortifications now existing in this area shall be demolished and the guns removed under the supervision of the Allied Governments and in periods to be fixed by them.

The German Government shall place at the disposal of the Governments of the Principal Allied and Associated Powers all hydrographical information now in its possession concerning the channels and adjoining waters between the Baltic and the North Sea.

ARTICLE 196.

All fortified works and fortifications, other than those mentioned in Section XIII (Heligoland) of Part III (Political Clauses for Europe) and in Article 195, now established within fifty kilometres of the German coast or on German islands off that coast shall

be considered as of a defensive nature and may remain in their existing condition.

No new fortifications shall be constructed within these limits. The armament of these defences shall not exceed, as regards the number and calibre of guns, those in position at the date of the coming into force of the present Treaty. The German Government shall communicate forthwith particulars thereof to all the European Governments.

On the expiration of a period of two months from the coming into force of the present Treaty the stocks of ammunition for these guns shall be reduced to and maintained at a maximum figure of fifteen hundred rounds per piece for calibres of 4.1-inch and under, and five hundred rounds per piece for higher calibres.

ARTICLE 197.

During the three months following the coming into force of the present Treaty the German high-power wireless telegraphy stations at Nauen, Hanover and Berlin shall not be used for the transmission of messages concerning naval, military or political questions of interest to Germany or any State which has been allied to Germany in the war, without the assent of the Governments of the Principal Allied and Associated Powers. These stations may be used for commercial purposes, but only under the supervision of the said Governments, who will decide the wave-length to be used.

During the same period Germany shall not build any more high-power wireless telegraphy stations in her own territory or that of Austria, Hungary, Bulgaria or Turkey.

SECTION III.

AIR CLAUSES.

ARTICLE 198.

The armed forces of Germany must not include any military or naval air forces.

Germany may, during a period not extending beyond October 1, 1919, maintain a maximum number of one hundred seaplanes or flying boats, which shall be exclusively employed in searching for submarine mines, shall be furnished with the necessary equipment for this purpose, and shall in no case carry arms, munitions or bombs of any nature whatever.

In addition to the engines installed in the seaplanes or flying boats above mentioned, one spare engine may be provided for each engine of each of these craft.

No dirigible shall be kept.

ARTICLE 199.

Within two months from the coming into force of the present Treaty the personnel of air forces on the rolls of the German land

and sea forces shall be demobilised. Up to October 1, 1919, however, Germany may keep and maintain a total number of one thousand men, including officers, for the whole of the cadres and personnel, flying and non-flying, of all formations and establishments.

ARTICLE 200.

Until the complete evacuation of German territory by the Allied and Associated troops, the aircraft of the Allied and Associated Powers shall enjoy in Germany freedom of passage through the air, freedom of transit and of landing.

ARTICLE 201.

During the six months following the coming into force of the present Treaty, the manufacture and importation of aircraft, parts of aircraft, engines for aircraft, and parts of engines for aircraft, shall be forbidden in all German territory.

ARTICLE 202.

On the coming into force of the present Treaty, all military and naval aeronautical material, except the machines mentioned in the second and third paragraphs of Article 198, must be delivered to the Governments of the Principal Allied and Associated Powers.

Delivery must be effected at such places as the said Governments may select, and must be completed within three months.

In particular, this material will include all items under the following heads which are or have been in use or were designed for warlike purposes:

Complete aeroplanes and seaplanes, as well as those being manufactured, repaired or assembled.

Dirigibles able to take the air, being manufactured, repaired or assembled.

Plant for the manufacture of hydrogen.

Dirigible sheds and shelters of every kind for aircraft.

Pending their delivery, dirigibles will, at the expense of Germany, be maintained inflated with hydrogen; the plant for the manufacture of hydrogen, as well as the sheds for dirigibles, may, at the discretion of the said Powers, be left to Germany until the time when the dirigibles are handed over.

Engines for aircraft.

Nacelles and fuselages.

Armament (guns, machine guns, light machine guns, bomb-dropping apparatus, torpedo-dropping apparatus, synchronization apparatus, aiming apparatus).

Munitions (cartridges, shells, bombs loaded or unloaded, stocks of explosives or of material for their manufacture).

Instruments for use on aircraft.

Wireless apparatus and photographic or cinematograph apparatus for use on aircraft.

Component parts of any of the items under the preceding heads.

The material referred to above shall not be removed without special permission from the said Governments.

SECTION IV.

INTER-ALLIED COMMISSIONS OF CONTROL.

ARTICLE 203.

All the military, naval and air clauses contained in the present Treaty, for the execution of which a time-limit is prescribed, shall be executed by Germany under the control of Inter-Allied Commissions specially appointed for this purpose by the Principal Allied and Associated Powers.

ARTICLE 204.

The Inter-Allied Commissions of Control will be specially charged with the duty of seeing to the complete execution of the delivery, destruction, demolition and rendering things useless to be carried out at the expense of the German Government in accordance with the present Treaty.

They will communicate to the German authorities the decisions which the Principal Allied and Associated Powers have reserved the right to take, or which the execution of the military, naval and air clauses may necessitate.

ARTICLE 205.

The Inter-Allied Commissions of Control may establish their organisations at the seat of the central German Government.

They shall be entitled as often as they think desirable to proceed to any point whatever in German territory, or to send sub-commissions, or to authorize one or more of their members to go, to any such point.

ARTICLE 206.

The German Government must give all necessary facilities for the accomplishment of their missions to the Inter-Allied Commissions of Control and to their members.

It shall attach a qualified representative to each Inter-Allied Commission of Control for the purpose of receiving the communications which the Commission may have to address to the German Government and of supplying or procuring for the Commission all information or documents which may be required.

The German Government must in all cases furnish at its own cost all labour and material required to effect the deliveries and the works of destruction, dismantling, demolition, and of rendering things useless, provided for in the present Treaty.

ARTICLE 207.

The upkeep and cost of the Commissions of Control and the expenses involved by their work shall be borne by Germany.

ARTICLE 208.

The Military Inter-Allied Commission of Control will represent the Governments of the Principal Allied and Associated Powers

in dealing with the German Government in all matters concerning the execution of the military clauses.

In particular it will be its duty to receive from the German Government the notifications relating to the location of the stocks and depots of munitions, the armament of the fortified works, fortresses and forts which Germany is allowed to retain, and the location of the works or factories for the production of arms, munitions and war material and their operations.

It will take delivery of the arms, munitions and war material, will select the points where such delivery is to be effected, and will supervise the works of destruction, demolition, and of rendering things useless, which are to be carried out in accordance with the present Treaty.

The German Government must furnish to the Military Inter-Allied Commission of Control all such information and documents as the latter may deem necessary to ensure the complete execution of the military clauses, and in particular all legislative and administrative documents and regulations.

ARTICLE 209.

The Naval Inter-Allied Commission of Control will represent the Governments of the Principal Allied and Associated Powers in dealing with the German Government in all matters concerning the execution of the naval clauses.

In particular it will be its duty to proceed to the building yards and to supervise the breaking-up of the ships which are under construction there, to take delivery of all surface ships or submarines, salvage ships, docks and the tubular dock, and to supervise the destruction and breaking-up provided for.

The German Government must furnish to the Naval Inter-Allied Commission of Control all such information and documents as the Commission may deem necessary to ensure the complete execution of the naval clauses, in particular the designs of the warships, the composition of their armaments, the details and models of the guns, munitions, torpedoes, mines, explosives, wireless telegraphic apparatus and, in general, everything relating to naval war material, as well as all legislative or administrative documents or regulations.

ARTICLE 210.

The Aeronautical Inter-Allied Commission of Control will represent the Governments of the Principal Allied and Associated Powers in dealing with the German Government in all matters concerning the execution of the air clauses.

In particular it will be its duty to make an inventory of the aeronautical material existing in German territory, to inspect aeroplane, balloon and motor manufactories, and factories producing arms, munitions and explosives capable of being used by aircraft, to visit all aerodromes, sheds, landing grounds, parks and depots, to authorise, where necessary, a removal of material and to take delivery of such material.

The German Government must furnish to the Aeronautical Inter-Allied Commission of Control all such information and legislative.

administrative or other documents which the Commission may consider necessary to ensure the complete execution of the air clauses, and in particular a list of the personnel belonging to all the German Air Services, and of the existing material, as well as of that in process of manufacture or on order, and a list of all establishments working for aviation, of their positions, and of all sheds and landing grounds.

SECTION V.

GENERAL ARTICLES.

ARTICLE 211.

After the expiration of a period of three months from the coming into force of the present Treaty, the German laws must have been modified and shall be maintained by the German Government in conformity with this Part of the present Treaty.

Within the same period all the administrative or other measures relating to the execution of this Part of the Treaty must have been taken.

ARTICLE 212.

The following portions of the Armistice of November 11, 1918: Article VI, the first two and the sixth and seventh paragraphs of Article VII; Article IX; Clauses I, II and V of Annex n° 2, and the Protocol, dated April 4, 1919, supplementing the Armistice of November 11, 1918, remain in force so far as they are not inconsistent with the above stipulations.

ARTICLE 213.

So long as the present Treaty remains in force, Germany undertakes to give every facility for any investigation which the Council of the League of Nations, acting if need be by a majority vote, may consider necessary.

PART VI.

PRISONERS OF WAR AND GRAVES.

SECTION I.

PRISONERS OF WAR.

ARTICLE 214.

The repatriation of prisoners of war and interned civilians shall take place as soon as possible after the coming into force of the present Treaty and shall be carried out with the greatest rapidity.

ARTICLE 215.

The repatriation of German prisoners of war and interned civilians shall, in accordance with Article 214, be carried out by a Commission composed of representatives of the Allied and Associated Powers on the one part and of the German Government on the other part.

For each of the Allied and Associated Powers a Sub-Commission, composed exclusively of Representatives of the interested Power and of Delegates of the German Government, shall regulate the details of carrying into effect the repatriation of the prisoners of war.

ARTICLE 216.

From the time of their delivery into the hands of the German authorities the prisoners of war and interned civilians are to be returned without delay to their homes by the said authorities.

Those amongst them who before the war were habitually resident in territory occupied by the troops of the Allied and Associated Powers are likewise to be sent to their homes, subject to the consent and control of the military authorities of the Allied and Associated armies of occupation.

ARTICLE 217.

The whole cost of repatriation from the moment of starting shall be borne by the German Government who shall also provide the land and sea transport and staff considered necessary by the Commission referred to in Article 215.

ARTICLE 218.

Prisoners of war and interned civilians awaiting disposal or undergoing sentence for offences against discipline shall be repatriated irrespective of the completion of their sentence or of the proceedings pending against them.

This stipulation shall not apply to prisoners of war and interned civilians punished for offences committed subsequent to May 1, 1919.

During the period pending their repatriation all prisoners of war and interned civilians shall remain subject to the existing regulations, more especially as regards work and discipline.

ARTICLE 219.

Prisoners of war and interned civilians who are awaiting disposal or undergoing sentence for offences other than those against discipline may be detained.

ARTICLE 220.

The German Government undertakes to admit to its territory without distinction all persons liable to repatriation.

Prisoners of war or other German nationals who do not desire to be repatriated may be excluded from repatriation; but the Allied and Associated Governments reserve to themselves the right either

to repatriate them or to take them to a neutral country or to allow them to reside in their own territories.

The German Government undertakes not to institute any exceptional proceedings against these persons or their families nor to take any repressive or vexatious measures of any kind whatsoever against them on this account.

ARTICLE 221.

The Allied and Associated Governments reserve the right to make the repatriation of German prisoners of war or German nationals in their hands conditional upon the immediate notification and release by the German Government of any prisoners of war who are nationals of the Allied and Associated Powers and may still be in Germany.

ARTICLE 222.

Germany undertakes:

(1) To give every facility to Commissions to enquire into the cases of those who cannot be traced; to furnish such Commissions with all necessary means of transport; to allow them access to camps, prisons, hospitals and all other places; and to place at their disposal all documents, whether public or private, which would facilitate their enquiries;

(2) To impose penalties upon any German officials or private persons who have concealed the presence of any nationals of any of the Allied and Associated Powers or have neglected to reveal the presence of any such after it had come to their knowledge.

ARTICLE 223.

Germany undertakes to restore without delay from the date of the coming into force of the present Treaty all articles, money, securities and documents which have belonged to nationals of the Allied and Associated Powers and which have been retained by the German authorities.

ARTICLE 224.

The High Contracting Parties waive reciprocally all repayment of sums due for the maintenance of prisoners of war in their respective territories.

SECTION II.

GRAVES.

ARTICLE 225.

The Allied and Associated Governments and the German Government will cause to be respected and maintained the graves of the soldiers and sailors buried in their respective territories.

They agree to recognise any Commission appointed by an Allied or Associated Government for the purpose of identifying, registering,

caring for or erecting suitable memorials over the said graves and to facilitate the discharge of its duties.

Furthermore they agree to afford, so far as the provisions of their laws and the requirements of public health allow, every facility for giving effect to requests that the bodies of their soldiers and sailors may be transferred to their own country.

ARTICLE 226.

The graves of prisoners of war and interned civilians who are nationals of the different belligerent States and have died in captivity shall be properly maintained in accordance with Article 225 of the present Treaty.

The Allied and Associated Governments on the one part and the German Government on the other part reciprocally undertake also to furnish to each other:

(1) A complete list of those who have died together with all information useful for identification;

(2) All information as to the number and position of the graves of all those who have been buried without identification.

PART VIII.

REPARATION.

SECTION I.

GENERAL PROVISIONS.

ARTICLE 231.

The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.

ARTICLE 232.

The Allied and Associated Governments recognize that the resources of Germany are not adequate, after taking into account permanent diminutions of such resources which will result from other provisions of the present Treaty, to make complete reparation for all such loss and damage.

The Allied and Associated Governments, however, require, and Germany undertakes, that she will make compensation for all damage done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by such

aggression by land, by sea and from the air, and in general all damage as defined in Annex I hereto.

In accordance with Germany's pledges, already given, as to complete restoration for Belgium, Germany undertakes, in addition to the compensation for damage elsewhere in this Part provided for, as a consequence of the violation of the Treaty of 1839, to make reimbursement of all sums which Belgium has borrowed from the Allied and Associated Governments up to November 11, 1918, together with interest at the rate of five per cent. (5%) per annum on such sums. This amount shall be determined by the Reparation Commission, and the German Government undertakes thereupon forthwith to make a special issue of bearer bonds to an equivalent amount payable in marks gold, on May 1, 1926, or, at the option of the German Government, on the 1st of May in any year up to 1926. Subject to the foregoing, the form of such bonds shall be determined by the Reparation Commission. Such bonds shall be handed over to the Reparation Commission, which has authority to take and acknowledge receipt thereof on behalf of Belgium.

ARTICLE 233.

The amount of the above damage for which compensation is to be made by Germany shall be determined by an Inter-Allied Commission, to be called the *Reparation Commission* and constituted in the form and with the powers set forth hereunder and in Annexes II to VII inclusive hereto.

This Commission shall consider the claims and give to the German Government a just opportunity to be heard.

The findings of the Commission as to the amount of damage defined as above shall be concluded and notified to the German Government on or before May 1, 1921, as representing the extent of that Government's obligations.

The Commission shall concurrently draw up a schedule of payments prescribing the time and manner for securing and discharging the entire obligation within a period of thirty years from May 1, 1921. If, however, within the period mentioned, Germany fails to discharge her obligations, any balance remaining unpaid may, within the discretion of the Commission, be postponed for settlement in subsequent years, or may be handled otherwise in such manner as the Allied and Associated Governments, acting in accordance with the procedure laid down in this Part of the present Treaty, shall determine.

ARTICLE 234.

The Reparation Commission shall after May 1, 1921, from time to time, consider the resources and capacity of Germany, and, after giving her representatives a just opportunity to be heard, shall have discretion to extend the date, and to modify the form of payments, such as are to be provided for in accordance with Article 233; but not to cancel any part, except with the specific authority of the several Governments represented upon the Commission.

ARTICLE 235.

In order to enable the Allied and Associated Powers to proceed at once to the restoration of their industrial and economic life, pending the full determination of their claims, Germany shall pay in such instalments and in such manner (whether in gold, commodities, ships, securities or otherwise) as the Reparation Commission may fix, during 1919, 1920 and the first four months of 1921, the equivalent of 20,000,000,000 gold marks. Out of this sum the expenses of the armies of occupation subsequent to the Armistice of November 11, 1918, shall first be met, and such supplies of food and raw materials as may be judged by the Governments of the Principal Allied and Associated Powers to be essential to enable Germany to meet her obligations for reparation may also, with the approval of the said Governments, be paid for out of the above sum. The balance shall be reckoned towards liquidation of the amounts due for reparation. Germany shall further deposit bonds as prescribed in paragraph 12 (c) of Annex II hereto.

ARTICLE 236.

Germany further agrees to the direct application of her economic resources to reparation as specified in Annexes III, IV, V, and VI, relating respectively to merchant shipping, to physical restoration, to coal and derivatives of coal, and to dyestuffs and other chemical products; provided always that the value of the property transferred and any services rendered by her under these Annexes, assessed in the manner therein prescribed, shall be credited to her towards liquidation of her obligations under the above Articles.

ARTICLE 237.

The successive instalments, including the above sum, paid over by Germany in satisfaction of the above claims will be divided by the Allied and Associated Governments in proportions which have been determined upon by them in advance on a basis of general equity and of the rights of each.

For the purposes of this division the value of property transferred and services rendered under Article 243, and under Annexes III, IV, V, VI, and VII, shall be reckoned in the same manner as cash payments effected in that year.

ARTICLE 238.

In addition to the payments mentioned above Germany shall effect, in accordance with the procedure laid down by the Reparation Commission, restitution in cash of cash taken away, seized or sequestered, and also restitution of animals, objects of every nature and securities taken away, seized or sequestered, in the cases in which it proves possible to identify them in territory belonging to Germany or her allies.

Until this procedure is laid down, restitution will continue in accordance with the provisions of the Armistice of November 11, 1918, and its renewals and the Protocols thereto.

ARTICLE 239.

The German Government undertakes to make forthwith the restitution contemplated by Article 238 and to make the payments and deliveries contemplated by Articles 233, 234, 235 and 236.

ARTICLE 240.

The German Government recognizes the Commission provided for by Article 233 as the same may be constituted by the Allied and Associated Governments in accordance with Annex II, and agrees irrevocably to the possession and exercise by such Commission of the power and authority given to it under the present Treaty.

The German Government will supply to the Commission all the information which the Commission may require relative to the financial situation and operations and to the property, productive capacity, and stocks and current production of raw materials and manufactured articles of Germany and her nationals, and further any information relative to military operations which in the judgment of the Commission may be necessary for the assessment of Germany's liability for reparation as defined in Annex I.

The German Government will accord to the members of the Commission and its authorised agents the same rights and immunities as are enjoyed in Germany by duly accredited diplomatic agents of friendly Powers.

Germany further agrees to provide for the salaries and expenses of the Commission and of such staff as it may employ.

ARTICLE 241.

Germany undertakes to pass, issue and maintain in force any legislation, orders and decrees that may be necessary to give complete effect to these provisions.

ARTICLE 242.

The provisions of this Part of the present Treaty do not apply to the property, rights and interests referred to in Sections III and IV of Part X (Economic Clauses) of the present Treaty, nor to the product of their liquidation, except so far as concerns any final balance in favour of Germany under Article 243 (a).

ARTICLE 243.

The following shall be reckoned as credits to Germany in respect of her reparation obligations:

(a) Any final balance in favour of Germany under Section V (Alsace-Lorraine) of Part III (Political Clauses for Europe) and Sections III and IV of Part X (Economic Clauses) of the present Treaty;

(b) Amounts due to Germany in respect of transfers under Section IV (Saar Basin) of Part III (Political Clauses for Europe), Part IX (Financial Clauses), and Part XII (Ports, Waterways and Railways);

(c) Amounts which in the judgment of the Reparation Commission should be credited to Germany on account of any other transfers under the present Treaty of property, rights, concessions or other interests.

In no case however shall credit be given for property restored in accordance with Article 238 of the present Part.

ARTICLE 244.

The transfer of the German submarine cables which do not form the subject of particular provisions of the present Treaty is regulated by Annex VII hereto.

ANNEX I.

Compensation may be claimed from Germany under Article 232 above in respect of the total damage under the following categories:

(1) Damage to injured persons and to surviving dependents by personal injury to or death of civilians caused by acts of war, including bombardments or other attacks on land, on sea, or from the air, and all the direct consequences thereof, and of all operations of war by the two groups of belligerents wherever arising.

(2) Damage caused by Germany or her allies to civilian victims of acts of cruelty, violence or maltreatment (including injuries to life or health as a consequence of imprisonment, deportation, internment or evacuation, of exposure at sea or of being forced to labour), wherever arising, and to the surviving dependents of such victims.

(3) Damage caused by Germany or her allies in their own territory or in occupied or invaded territory to civilian victims of all acts injurious to health or capacity to work, or to honour, as well as to the surviving dependents of such victims.

(4) Damage caused by any kind of maltreatment of prisoners of war.

(5) As damage caused to the peoples of the Allied and Associated Powers, all pensions and compensation in the nature of pensions to naval and military victims of war (including members of the air force), whether mutilated, wounded, sick or invalided, and to the dependents of such victims, the amount due to the Allied and Associated Governments being calculated for each of them as being the capitalised cost of such pensions and compensation at the date of the coming into force of the present Treaty on the basis of the scales in force in France at such date.

(6) The cost of assistance by the Governments of the Allied and Associated Powers to prisoners of war and to their families and dependents.

(7) Allowances by the Governments of the Allied and Associated Powers to the families and dependents of mobilised persons or persons serving with the forces, the amount due to them for each calendar year in which hostilities occurred being calculated for each Government on the basis of the average scale for such payments in force in France during that year.

(8) Damage caused to civilians by being forced by Germany or her allies to labour without just remuneration.

(9) Damage in respect of all property wherever situated belonging to any of the Allied or Associated States or their nationals, with the exception of naval and military works or materials, which has been carried off, seized, injured or destroyed by the acts of Germany or her allies on land, on sea or from the air, or damage directly in consequence of hostilities or of any operations of war.

(10) Damage in the form of levies, fines and other similar exactions imposed by Germany or her allies upon the civilian population.

ANNEX II.

1.

The Commission referred to in Article 233 shall be called "The Reparation Commission" and is hereinafter referred to as "the Commission".

2.

Delegates to this Commission shall be nominated by the United States of America, Great Britain, France, Italy, Japan, Belgium and the Serb-Croat-Slovene State. Each of these Powers will appoint one Delegate and also one Assistant Delegate, who will take his place in case of illness or necessary absence, but at other times will only have the right to be present at proceedings without taking any part therein.

On no occasion shall the Delegates of more than five of the above Powers have the right to take part in the proceedings of the Commission and to record their votes. The Delegates of the United States, Great Britain, France and Italy shall have this right on all occasions. The Delegate of Belgium shall have this right on all occasions other than those referred to below. The Delegate of Japan shall have this right on occasions when questions relating to damage at sea, and questions arising under Article 260 of Part IX (Financial Clauses) in which Japanese interests are concerned, are under consideration. The Delegate of the Serb-Croat-Slovene State shall have this right when questions relating to Austria, Hungary or Bulgaria are under consideration.

Each Government represented on the Commission shall have the right to withdraw therefrom upon twelve months notice filed with the Commission and confirmed in the course of the sixth month after the date of the original notice.

3.

Such of the other Allied and Associated Powers as may be interested shall have the right to appoint a Delegate to be present and act as Assessor only while their respective claims and interests are under examination or discussion, but without the right to vote.

4.

In case of the death, resignation or recall of any Delegate, Assistant Delegate or Assessor, a successor to him shall be nominated as soon as possible.

5.

The Commission will have its principal permanent Bureau in Paris and will hold its first meeting in Paris as soon as practicable after the coming into force of the present Treaty, and thereafter will meet in such place or places and at such time as it may deem convenient and as may be necessary for the most expeditious discharge of its duties.

6.

At its first meeting the Commission shall elect, from among the Delegates referred to above, a Chairman and a Vice-Chairman, who shall hold office for one year and shall be eligible for re-election. If a vacancy in the Chairmanship or Vice-Chairmanship should occur during the annual period, the Commission shall proceed to a new election for the remainder of the said period.

7.

The Commission is authorised to appoint all necessary officers, agents and employees who may be required for the execution of its functions, and to fix their remuneration; to constitute committees, whose members need not necessarily be members of the Commission, and to take all executive steps necessary for the purpose of discharging its duties; and to delegate authority and discretion to officers, agents and committees.

8.

All proceedings of the Commission shall be private, unless, on particular occasions, the Commission shall otherwise determine for special reasons.

9.

The Commission shall be required, if the German Government so desire, to hear, within a period which it will fix from time to time, evidence and arguments on the part of Germany on any question connected with her capacity to pay.

10.

The Commission shall consider the claims and give to the German Government a just opportunity to be heard, but not to take any part whatever in the decisions of the Commission. The Commission shall afford a similar opportunity to the allies of Germany, when it shall consider that their interests are in question.

11.

The Commission shall not be bound by any particular code or rules of law or by any particular rule of evidence or of procedure, but shall be guided by justice, equity and good faith. Its decisions must follow the same principles and rules in all cases where they are

applicable. It will establish rules relating to methods of proof of claims. It may act on any trustworthy modes of computation.

12.

The Commission shall have all the powers conferred upon it, and shall exercise all the functions assigned to it, by the present Treaty.

The Commission shall in general have wide latitude as to its control and handling of the whole reparation problem as dealt with in this Part of the present Treaty and shall have authority to interpret its provisions. Subject to the provisions of the present Treaty, the Commission is constituted by the several Allied and Associated Governments referred to in paragraphs 2 and 3 above as the exclusive agency of the said Governments respectively for receiving, selling, holding, and distributing the reparation payments to be made by Germany under this Part of the present Treaty. The Commission must comply with the following conditions and provisions:

a) Whatever part of the full amount of the proved claims is not paid in gold, or in ships, securities and commodities or otherwise, Germany shall be required, under such conditions as the Commission may determine, to cover by way of guarantee by an equivalent issue of bonds, obligations or otherwise, in order to constitute an acknowledgment of the said part of the debt.

(b) In periodically estimating Germany's capacity to pay, the Commission shall examine the German system of taxation, first, to the end that the sums for reparation which Germany is required to pay shall become a charge upon all her revenues prior to that for the service or discharge of any domestic loan, and secondly, so as to satisfy itself that, in general, the German scheme of taxation is fully as heavy proportionately as that of any of the Powers represented on the Commission.

(c) In order to facilitate and continue the immediate restoration of the economic life of the Allied and Associated countries, the Commission will as provided in Article 235 take from Germany by way of security for and acknowledgment of her debt a first instalment of gold bearer bonds free of all taxes and charges of every description established or to be established by the Government of the German Empire or of the German States, or by any authority subject to them; these bonds will be delivered on account and in three portions, the marks gold being payable in conformity with Article 262 of Part IX (Financial Clauses) of the present Treaty as follows:

(1) To be issued forthwith, 20,000,000,000 Marks gold bearer bonds, payable not later than May 1, 1921, without interest. There shall be specially applied towards the amortisation of these bonds the payments which Germany is pledged to make in conformity with Article 235, after deduction of the sums used for the reimbursement of expenses of the armies of occupation and for payment of food-stuffs and raw materials. Such bonds as have not been redeemed by May 1, 1921, shall then be exchanged or new bonds of the same type as those provided for below (paragraph 12, c, (2)).

(2) To be issued forthwith, further 40,000,000,000 Marks gold bearer bonds, bearing interest at $2\frac{1}{2}$ per cent. per annum between 1921 and 1926, and thereafter at 5 per cent. per annum with an addi-

tional 1 per cent. for amortisation beginning in 1926 on the whole amount of the issue.

(3) To be delivered forthwith a covering undertaking in writing to issue when, but not until, the Commission is satisfied that Germany can meet such interest and sinking fund obligations, a further instalment of 40,000,000,000 Marks gold 5 per cent. bearer bonds, the time and mode of payment of principal and interest to be determined by the Commission.

The dates for payment of interest, the manner of applying the amortisation fund, and all other questions relating to the issue, management and regulation of the bond issue shall be determined by the Commission from time to time.

Further issues by way of acknowledgment and security may be required as the Commission subsequently determines from time to time.

(d) In the event of bonds, obligations or other evidence of indebtedness issued by Germany by way of security for or acknowledgment of her reparation debt being disposed of outright, not by way of pledge, to persons other than the several Governments in whose favour Germany's original reparation indebtedness was created, an amount of such reparation indebtedness shall be deemed to be extinguished corresponding to the nominal value of the bonds, etc., so disposed of outright, and the obligation of Germany in respect of such bonds shall be confined to her liabilities to the holders of the bonds, as expressed upon their face.

(e) The damage for repairing, reconstructing and rebuilding property in the invaded and devastated districts, including reinstallation of furniture, machinery and other equipment, will be calculated according to the cost at the dates when the work is done.

(f) Decisions of the Commission relating to the total or partial cancellation of the capital or interest of any verified debt of Germany must be accompanied by a statement of its reasons.

13.

As to voting, the Commission will observe the following rules:

When a decision of the Commission is taken, the votes of all the Delegates entitled to vote, or in the absence of any of them, of their Assistant Delegates, shall be recorded. Abstention from voting is to be treated as a vote against the proposal under discussion. Assessors have no vote.

On the following questions unanimity is necessary:

(a) Questions involving the sovereignty of any of the Allied and Associated Powers, or the cancellation of the whole or any part of the debt or obligations of Germany;

(b) Questions of determining the amount and conditions of bonds or other obligations to be issued by the German Government and of fixing the time and manner for selling, negotiating or distributing such bonds;

(c) Any postponement, total or partial, beyond the end of 1930, of the payment of instalments falling due between May 1, 1921, and the end of 1926 inclusive;

(d) Any postponement, total or partial, of any instalment falling due after 1926 for a period exceeding three years;

(e) Questions of applying in any particular case a method of measuring damages different from that which has been previously applied in a similar case;

(f) Questions of the interpretation of the provisions of this Part of the present Treaty.

All other questions shall be decided by the vote of a majority.

In case of any difference of opinion among the Delegates, which cannot be solved by reference to their Governments, upon the question whether a given case is one which requires a unanimous vote for its decision or not, such difference shall be referred to the immediate arbitration of some impartial person to be agreed upon by their Governments, whose award the Allied and Associated Governments agree to accept.

14.

Decisions of the Commission, in accordance with the powers conferred upon it, shall forthwith become binding and may be put into immediate execution without further proceedings.

15.

The Commission will issue to each of the interested Powers, in such form as the Commission shall fix:

(1) A certificate stating that it holds for the account of the said Power bonds of the issues mentioned above, the said certificate, on the demand of the Power concerned, being divisible in a number of parts not exceeding five;

(2) From time to time certificates stating the goods delivered by Germany on account of her reparation debt which it holds for the account of the said Power.

The said certificates shall be registered, and upon notice to the Commission, may be transferred by endorsement.

When bonds are issued for sale or negotiation, and when goods are delivered by the Commission, certificates to an equivalent value must be withdrawn.

16.

Interest shall be debited to Germany as from May 1, 1921, in respect of her debt as determined by the Commission, after allowing for sums already covered by cash payments or their equivalent, or by bonds issued to the Commission, or under Article 243. The rate of interest shall be 5 per cent. unless the Commission shall determine at some future time that circumstances justify a variation of this rate.

The Commission, in fixing on May 1, 1921, the total amount of the debt of Germany, may take account of interest due on sums arising out of the reparation of material damage as from November 11, 1918, up to May 1, 1921.

17.

In case of default by Germany in the performance of any obligation under this Part of the present Treaty, the Commission will forthwith give notice of such default to each of the interested Powers

and may make such recommendations as to the action to be taken in consequence of such default as it may think necessary.

18.

The measures which the Allied and Associated Powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals and in general such other measures as the respective Governments may determine to be necessary in the circumstances.

19.

Payments required to be made in gold or its equivalent on account of the proved claims of the Allied and Associated Powers may at any time be accepted by the Commission in the form of chattels, properties, commodities, businesses, rights, concessions, within or without German territory, ships, bonds, shares or securities of any kind, or currencies of Germany or other States, the value of such substitutes for gold being fixed at a fair and just amount by the Commission itself.

20.

The Commission, in fixing or accepting payment in specified properties or rights, shall have due regard for any legal or equitable interests of the Allied and Associated Powers or of neutral Powers or of their nationals therein.

21.

No member of the Commission shall be responsible, except to the Government appointing him, for any action or omission as such member. No one of the Allied or Associated Governments assumes any responsibility in respect of any other Government.

22.

Subject to the provisions of the present Treaty this Annex may be amended by the unanimous decision of the Governments represented from time to time upon the Commission.

23.

When all the amounts due from Germany and her allies under the present Treaty or the decisions of the Commission have been discharged and all sums received, or their equivalents, shall have been distributed to the Powers interested, the Commission shall be dissolved.

ANNEX III.

1.

Germany recognises the right of the Allied and Associated Powers to the replacement, ton for ton (gross tonnage) and class for class,

of all merchant ships and fishing boats lost or damaged owing to the war.

Nevertheless, and in spite of the fact that the tonnage of German shipping at present in existence is much less than that lost by the Allied and Associated Powers in consequence of the German aggression, the right thus recognised will be enforced on German ships and boats under the following conditions:

The German Government, on behalf of themselves and so as to bind all other persons interested, cede to the Allied and Associated Governments the property in all the German merchant ships which are of 1,600 tons gross and upwards; in one-half, reckoned in tonnage, of the ships which are between 1,000 tons and 1,600 tons gross; in one-quarter, reckoned in tonnage, of the steam trawlers; and in one-quarter, reckoned in tonnage, of the other fishing boats.

2.

The German Government will, within two months of the coming into force of the present Treaty, deliver to the Reparation Commission all the ships and boats mentioned in paragraph 1.

3.

The ships and boats mentioned in paragraph 1 include all ships and boats which (a) fly, or may be entitled to fly, the German merchant flag; or (b) are owned by any German national, company or corporation or by any company or corporation belonging to a country other than an Allied or Associated country and under the control or direction of German nationals; or (c) are now under construction (1) in Germany, (2) in other than Allied or Associated countries for the account of any German national, company or corporation.

4.

For the purpose of providing documents of title for the ships and boats to be handed over as above mentioned, the German Government will:

(a) Deliver to the Reparation Commission in respect of each vessel a bill of sale or other document of title evidencing the transfer to the Commission of the entire property in the vessel, free from all encumbrances, charges and liens of all kinds, as the Commission may require;

(b) Take all measures that may be indicated by the Reparation Commission for ensuring that the ships themselves shall be placed at its disposal.

5.

As an additional part of reparation, Germany agrees to cause merchant ships to be built in German yards for the account of the Allied and Associated Governments as follows:

(a) Within three months of the coming into force of the present Treaty, the Reparation Commission will notify to the German Government the amount of tonnage to be laid down in German ship-

yards in each of the two years next succeeding the three months mentioned above.

(b) Within two years of the coming into force of the present Treaty, the Reparation Commission will notify to the German Government the amount of tonnage to be laid down in each of the three years following the two years mentioned above.

(c) The amount of tonnage to be laid down in each year shall not exceed 200,000 tons, gross tonnage.

(d) The specifications of the ships to be built, the conditions under which they are to be built and delivered, the price per ton at which they are to be accounted for by the Reparation Commission, and all other questions relating to the accounting, ordering, building and delivery of the ships, shall be determined by the Commission.

Germany undertakes to restore in kind and in normal condition of upkeep to the Allied and Associated Powers, within two months of the coming into force of the present Treaty, in accordance with procedure to be laid down by the Reparation Commission, any boats and other movable appliances belonging to inland navigation which since August 1, 1914, have by any means whatever come into her possession or into the possession of her nationals, and which can be identified.

With a view to make good the loss in inland navigation tonnage, from whatever cause arising, which has been incurred during the war by the Allied and Associated Powers, and which cannot be made good by means of the restitution prescribed above, Germany agrees to cede to the Reparation Commission a portion of the German river fleet up to the amount of the loss mentioned above, provided that such cession shall not exceed 20 per cent. of the river fleet as it existed on November 11, 1918.

The conditions of this cession shall be settled by the arbitrators referred to in Article 339 of Part XII (Ports, Waterways and Railways) of the present Treaty, who are charged with the settlement of difficulties relating to the apportionment of river tonnage resulting from the new international régime applicable to certain river systems or from the territorial changes affecting those systems.

7.

Germany agrees to take any measures that may be indicated to her by the Reparation Commission for obtaining the full title to the property in all ships which have during the war been transferred, or are in process of transfer, to neutral flags, without the consent of the Allied and Associated Governments.

8.

Germany waives all claims of any description against the Allied and Associated Governments and their nationals in respect of the detention, employment, loss or damage of any German ships or boats, exception being made of payments due in respect of the employment of ships in conformity with the Armistice Agreement of January 13, 1919, and subsequent Agreements.

The handing over of the ships of the German mercantile marine must be continued without interruption in accordance with the said Agreement.

9.

Germany waives all claims to vessels or cargoes sunk by or in consequence of naval action and subsequently salvaged, in which any of the Allied or Associated Governments or their nationals may have any interest either as owners, charterers, insurers or otherwise, notwithstanding any decree of condemnation which may have been made by a Prize Court of Germany or of her allies.

ANNEX IV.

1.

The Allied and Associated Powers require, and Germany undertakes, that in part satisfaction of her obligations expressed in the present Part she will, as hereinafter provided, devote her economic resources directly to the physical restoration of the invaded areas of the Allied and Associated Powers, to the extent that these Powers may determine.

2.

The Allied and Associated Governments may file with the Reparation Commission lists showing:

(a) Animals, machinery, equipment, tools and like articles of a commercial character, which have been seized, consumed or destroyed by Germany or destroyed in direct consequence of military operations, and which such Governments, for the purpose of meeting immediate and urgent needs, desire to have replaced by animals and articles of the same nature which are in being in German territory at the date of the coming into force of the present Treaty;

(b) Reconstruction materials (stones, bricks, refractory bricks, tiles, wood, window-glass, steel, lime, cement, etc.), machinery, heating apparatus, furniture and like articles of a commercial character which the said Governments desire to have produced and manufactured in Germany and delivered to them to permit of the restoration of the invaded areas.

3.

The lists relating to the articles mentioned in 2 (a) above shall be filed within sixty days after the date of the coming into force of the present Treaty.

The lists relating to the articles in 2 (b) above shall be filed on or before December 31, 1919.

The lists shall contain all such details as are customary in commercial contracts dealing with the subject matter, including specifications, dates of delivery (but not extending over more than four years), and places of delivery, but not price or value, which shall be fixed as hereinafter provided by the Commission.

4.

Immediately upon the filing of such lists with the Commission, the Commission shall consider the amount and number of the materials and animals mentioned in the lists provided for above which are to be required of Germany. In reaching a decision on this matter the Commission shall take into account such domestic requirements of Germany as it deems essential for the maintenance of Germany's social and economic life, the prices and dates at which similar articles can be obtained in the Allied and Associated countries as compared with those to be fixed for German articles, and the general interest of the Allied and Associated Governments that the industrial life of Germany be not so disorganised as to affect adversely the ability of Germany to perform the other acts of reparation stipulated for.

Machinery, equipment, tools and like articles of a commercial character in actual industrial use are not, however, to be demanded of Germany unless there is no free stock of such articles respectively which is not in use and is available, and then not in excess of thirty per cent. of the quantity of such articles in use in any one establishment or undertaking.

The Commission shall give representatives of the German Government and opportunity and a time to be heard as to their capacity to furnish the said materials, articles and animals.

The decision of the Commission shall thereupon and at the earliest possible moment be communicated to the German Government and to the several interested Allied and Associated Governments.

The German Government undertakes to deliver the materials, articles and animals as specified in the said communication, and the interested Allied and Associated Governments severally agree to accept the same, provided they conform to the specification given, or are not, in the judgment of the Commission, unfit to be utilized in the work of reparation.

5.

The Commission shall determine the value to be attributed to the materials, articles and animals to be delivered in accordance with the foregoing, and the Allied or Associated Power receiving the same agrees to be charged with such value, and the amount thereof shall be treated as a payment by Germany to be divided in accordance with Article 237 of this Part of the present Treaty.

In cases where the right to require physical restoration as above provided is exercised, the Commission shall ensure that the amount to be credited against the reparation obligation of Germany shall be the fair value of work done or materials supplied by Germany, and that the claim made by the interested Power in respect of the damage so repaired by physical restoration shall be discharged to the extent of the proportion which the damage thus repaired bears to the whole of the damage thus claimed for.

6.

As an immediate advance on account of the animals referred to in paragraph 2 (a) above, Germany undertakes to deliver in equal

monthly instalments in the three months following the coming into force of the present Treaty the following quantities of live stock:

(1) *To the French Government.*

500 stallions (3 to 7 years);
30,000 fillies and mares (18 months to 7 years), type: Ardennais,
Boulonnais or Belgian;
2,000 bulls (18 months to 3 years);
90,000 milch cows (2 to 6 years);
1,000 rams;
100,000 sheep;
10,000 goats.

(2) *To the Belgian Government.*

200 stallions (3 to 7 years), large Belgian type;
5,000 mares (3 to 7 years), large Belgian type;
5,000 fillies (18 months to 3 years), large Belgian type;
2,000 bulls (18 months to 3 years);
50,000 milch cows (2 to 6 years);
40,000 heifers;
200 rams;
20,000 sheep;
15,000 sows.

The animals delivered shall be of average health and condition.

To the extent that animals so delivered cannot be identified as animals taken away or seized, the value of such animals shall be credited against the reparation obligations of Germany in accordance with paragraph 5 of this Annex.

7.

Without waiting for the decisions of the Commission referred to in paragraph 4 of this Annex to be taken, Germany must continue the delivery to France of the agricultural material referred to in Article III of the renewal dated January 16, 1919, of the Armistice.

ANNEX V.

1.

Germany accords the following options for the delivery of coal and derivatives of coal to the undermentioned signatories of the present Treaty.

2.

Germany undertakes to deliver to France seven million tons of coal per year for ten years. In addition, Germany undertakes to deliver to France annually for a period not exceeding ten years an amount of coal equal to the difference between the annual production before the war of the coal mines of the Nord and Pas de Calais, destroyed as

a result of the war, and the production of the mines of the same area during the years in question: such delivery not to exceed twenty million tons in any one year of the first five years, and eight million tons in any one year of the succeeding five years.

It is understood that due diligence will be exercised in the restoration of the destroyed mines in the Nord and the Pas de Calais.

3.

Germany undertakes to deliver to Belgium eight million tons of coal annually for ten years.

4.

Germany undertakes to deliver to Italy up to the following quantities of coal:

July 1919 to June 1920	-----	4½ million tons,
— 1920 — 1921	-----	6 —
— 1921 — 1922	-----	7½ —
— 1922 — 1923	-----	8 —
— 1923 — 1924	-----	8½ —
and each of the following five years	-----	8½ —

At least two-thirds of the actual deliveries to be land-borne.

5.

Germany further undertakes to deliver annually to Luxemburg, if directed by the Reparation Commission, a quantity of coal equal to the pre-war annual consumption of German coal in Luxemburg.

6.

The prices to be paid for coal delivered under these options shall be as follows:

(a) For overland delivery, including delivery by barge, the German pithead price to German nationals, plus the freight to French, Belgian, Italian or Luxemburg frontiers, provided that the pithead price does not exceed the pithead price of British coal for export. In the case of Belgian bunker coal, the price shall not exceed the Dutch bunker price.

Railroad and barge tariffs shall not be higher than the lowest similar rates paid in Germany.

(b) For sea delivery, the German export price f. o. b. German ports, or the British export price f. o. b. British ports, whichever may be lower.

7.

The Allied and Associated Governments interested may demand the delivery, in place of coal, of metallurgical coke in the proportion of 3 tons of coke to 4 tons of coal.

8.

Germany undertakes to deliver to France, and to transport to the French frontier by rail or by water, the following products, during each of the three years following the coming into force of this Treaty:

Benzol	35,000 tons.
Coal tar	50,000 tons.
Sulphate of ammonia	30,000 tons.

All or part of the coal tar may, at the option of the French Government, be replaced by corresponding quantities of products of distillation, such as light oils, heavy oils, anthracene, naphthalene or pitch.

9.

The price paid for coke and for the articles referred to in the preceding paragraph shall be the same as the price paid by German nationals under the same conditions of shipment to the French frontier or to the German ports, and shall be subject to any advantages which may be accorded similar products furnished to German nationals.

10.

The foregoing options shall be exercised through the intervention of the Reparation Commission, which, subject to the specific provisions hereof, shall have power to determine all questions relative to procedure and the qualities and quantities of products, the quantity of coke which may be substituted for coal, and the times and modes of delivery and payment. In giving notice to the German Government of the foregoing options the Commission shall give at least 120 days' notice of deliveries to be made after January 1, 1920, and at least 30 days' notice of deliveries to be made between the coming into force of this Treaty and January 1, 1920. Until Germany has received the demands referred to in this paragraph, the provisions of the Protocol of December 25, 1918, (Execution of Article VI of the Armistice of November 11, 1918) remain in force. The notice to be given to the German Government of the exercise of the right of substitution accorded by paragraphs 7 and 8 shall be such as the Reparation Commission may consider sufficient. If the Commission shall determine that the full exercise of the foregoing options would interfere unduly with the industrial requirements of Germany, the Commission is authorised to postpone or to cancel deliveries, and in so doing to settle all questions of priority; but the coal to replace coal from destroyed mines shall receive priority over other deliveries.

ANNEX VI.

1.

Germany accords to the Reparation Commission an option to require as part of reparation the delivery by Germany of such quantities and kinds of dyestuffs and chemical drugs as the Commission

may designate, not exceeding 50 per cent. of the total stock of each and every kind of dyestuff and chemical drug in Germany or under German control at the date of the coming into force of the present Treaty.

This option shall be exercised within sixty days of the receipt by the Commission of such particulars as to stocks as may be considered necessary by the Commission.

2.

Germany further accords to the Reparation Commission an option to require delivery during the period from the date of the coming into force of the present Treaty until January 1, 1920, and during each period of six months thereafter until January 1, 1925, of any specified kind of dyestuff and chemical drug up to an amount not exceeding 25 per cent. of the German production of such dyestuffs and chemical drugs during the previous six months period. If in any case the production during such previous six months was, in the opinion of the Commission, less than normal, the amount required may be 25 per cent. of the normal production.

Such option shall be exercised within four weeks after the receipt of such particulars as to production and in such form as may be considered necessary by the Commission; these particulars shall be furnished by the German Government immediately after the expiration of each six months period.

3.

For dyestuffs and chemical drugs delivered under paragraph 1, the price shall be fixed by the Commission having regard to pre-war net export prices and to subsequent increases of cost.

For dyestuffs and chemical drugs delivered under paragraph 2, the price shall be fixed by the Commission having regard to pre-war net export prices and subsequent variations of cost, or the lowest net selling price of similar dyestuffs and chemical drugs to any other purchaser.

4.

All details, including mode and times of exercising the options, and making delivery, and all other questions arising under this arrangement shall be determined by the Reparation Commission; the German Government will furnish to the Commission all necessary information and other assistance which it may require.

5.

The above expression "dyestuffs and chemical drugs" includes all synthetic dyes and drugs and intermediate or other products used in connection with dyeing, so far as they are manufactured for sale. The present arrangement shall also apply to cinchona bark and salts of quinine.

ANNEX VII.

Germany renounces on her own behalf and on behalf of her nationals in favour of the Principal Allied and Associated Powers all rights, titles or privileges of whatever nature in the submarine cables set out below, or in any portions thereof:

Emden-Vigo: from the Straits of Dover to off Vigo;
 Emden-Brest: from off Cherbourg to Brest;
 Emden-Teneriffe: from off Dunkirk to off Teneriffe;
 Emden-Azores (1): from the Straits of Dover to Fayal;
 Emden-Azores (2): from the Straits of Dover to Fayal;
 Azores-New-York (1): from Fayal to New York;
 Azores-New York (2): from Fayal to the longitude of Halifax;
 Teneriffe-Monrovia: from off Teneriffe to off Monrovia;
 Monrovia-Lome:

from about-----	{	lat. : 2° 30' N.;
		long. : 7° 40' W. of Greenwich;
to about-----	{	lat. : 2° 20' N.;
		long. : 5° 30' W. of Greenwich;
and from about-----	{	lat. : 3° 48' N.;
		long. : 0° 00'.

to Lome;

Lome-Duala: from Lome to Duala;

Monrovia-Pernambuco: from off Monrovia to off Pernambuco;

Constantinople-Constanza: from Constantinople to Constanza;

Yap-Shanghai, Yap-Guam, and Yap-Menado (Celebes): from Yap Island to Shanghai, from Yap Island to Guam Island, and from Yap Island to Menado.

The value of the above mentioned cables or portions thereof in so far as they are privately owned, calculated on the basis of the original cost less a suitable allowance for depreciation, shall be credited to Germany in the reparation account.

SECTION II.

SPECIAL PROVISIONS.

ARTICLE 245.

Within six months after the coming into force of the present Treaty the German Government must restore to the French Government the trophies, archives, historical souvenirs or works of art carried away from France by the German authorities in the course of the war of 1870-1871 and during this last war, in accordance with a list which will be communicated to it by the French Government; particularly the French flags taken in the course of the war of 1870-1871 and all the political papers taken by the German authorities on October 10, 1870, at the chateau of Cerçay, near Brunoy (Seine-et-Oise) belonging at the time to Mr. Rouher, formerly Minister of State.

ARTICLE 246.

Within six months from the coming into force of the present Treaty, Germany will restore to His Majesty the King of the Hedjaz

the original Koran of the Caliph Othman, which was removed from Medina by the Turkish authorities and is stated to have been presented to the ex-Emperor William II.

Within the same period Germany will hand over to His Britannic Majesty's Government the skull of the Sultan Mkwawa which was removed from the Protectorate of German East Africa and taken to Germany.

The delivery of the articles above referred to will be effected in such place and in such conditions as may be laid down by the Governments to which they are to be restored.

ARTICLE 247.

Germany undertakes to furnish to the University of Louvain, within three months after a request made by it and transmitted through the intervention of the Reparation Commission, manuscripts, incunabula, printed books, maps and objects of collection corresponding in number and value to those destroyed in the burning by Germany of the Library of Louvain. All details regarding such replacement will be determined by the Reparation Commission.

Germany undertakes to deliver to Belgium, through the Reparation Commission, within six months of the coming into force of the present Treaty, in order to enable Belgium to reconstitute two great artistic works:

(1) The leaves of the triptych of the Mystic Lamb painted by the Van Eyck brothers, formerly in the Church of St. Bavon at Ghent, now in the Berlin Museum;

(2) The leaves of the triptych of the Last Supper, painted by Dierick Bouts, formerly in the Church of St. Peter at Louvain, two of which are now in the Berlin Museum and two in the Old Pinakothek at Munich.

PART IX.

FINANCIAL CLAUSES.

ARTICLE 248.

Subject to such exceptions as the Reparation Commission may approve, a first charge upon all the assets and revenues of the German Empire and its constituent States shall be the cost of reparation and all other costs arising under the present Treaty or any treaties or agreements supplementary thereto or under arrangements concluded between Germany and the Allied and Associated Powers during the Armistice or its extensions.

Up to May 1, 1921, the German Government shall not export or dispose of, and shall forbid the export or disposal of, gold without the previous approval of the Allied and Associated Powers acting through the Reparation Commission.

ARTICLE 249.

There shall be paid by the German Government the total cost of all armies of the Allied and Associated Governments in occupied

German territory from the date of the signature of the Armistice of November 11, 1918, including the keep of men and beasts, lodging and billeting, pay and allowances, salaries and wages, bedding, heating, lighting, clothing, equipment, harness and saddlery, armament and rolling-stock, air services, treatment of sick and wounded, veterinary and remount services, transport service of all sorts (such as by rail, sea or river, motor lorries), communications and correspondence, and in general the cost of all administrative or technical services the working of which is necessary for the training of troops and for keeping their numbers up to strength and preserving their military efficiency.

The cost of such liabilities under the above heads so far as they relate to purchases or requisitions by the Allied and Associated Governments in the occupied territories shall be paid by the German Government to the Allied and Associated Governments in marks at the current or agreed rate of exchange. All other of the above costs shall be paid in gold marks.

ARTICLE 250.

Germany confirms the surrender of all material handed over to the Allied and Associated Powers in accordance with the Armistice of November 11, 1918, and subsequent Armistice Agreements, and recognises the title of the Allied and Associated Powers to such material.

There shall be credited to the German Government, against the sums due from it to the Allied and Associated Powers for reparation, the value, as assessed by the Reparation Commission, referred to in Article 233 of Part VIII (Reparation) of the present Treaty, of the material handed over in accordance with Article VII of the Armistice of November 11, 1918, or Article III of the Armistice Agreement of January 16, 1919, as well as of any other material handed over in accordance with the Armistice of November 11, 1918, and of subsequent Armistice Agreements, for which, as having non-military value, credit should in the judgment of the Reparation Commission be allowed to the German Government.

Property belonging to the Allied and Associated Governments or their nationals restored or surrendered under the Armistice Agreements in specie shall not be credited to the German Government.

ARTICLE 251.

The priority of the charges established by Article 248 shall, subject to the qualifications made below, be as follows:

- (a) The cost of the armies of occupation as defined under Article 249 during the Armistice and its extensions;
- (b) The cost of any armies of occupation as defined under Article 249 after the coming into force of the present Treaty;
- (c) The cost of reparation arising out of the present Treaty or any treaties or conventions supplementary thereto;
- (d) The cost of all other obligations incumbent on Germany under the Armistice Conventions or under this Treaty or any treaties or conventions supplementary thereto.

The payment for such supplies of food and raw material for Germany and such other payments as may be judged by the Allied and Associated Powers to be essential to enable Germany to meet her obligations in respect of reparation will have priority to the extent and upon the conditions which have been or may be determined by the Governments of the said Powers.

ARTICLE 252.

The right of each of the Allied and Associated Powers to dispose of enemy assets and property within its jurisdiction at the date of the coming into force of the present Treaty is not affected by the foregoing provisions.

ARTICLE 253.

Nothing in the foregoing provisions shall prejudice in any manner charges or mortgages lawfully effected in favour of the Allied or Associated Powers or their nationals respectively, before the date at which a state of war existed between Germany and the Allied or Associated Power concerned, by the German Empire or its constituent States, or by German nationals, on assets in their ownership at that date.

ARTICLE 254.

The Powers to which German territory is ceded shall, subject to the qualifications made in Article 255, undertake to pay:

- (1) A portion of the debt of the German Empire as it stood on August 1, 1914, calculated on the basis of the ratio between the average for the three financial years 1911, 1912, 1913, of such revenues of the ceded territory, and the average for the same years of such revenues of the whole German Empire as in the judgment of the Reparation Commission are best calculated to represent the relative ability of the respective territories to make payment;
- (2) A portion of the debt as it stood on August 1, 1914, of the German State to which the ceded territory belonged, to be determined in accordance with the principle stated above.

Such portions shall be determined by the Reparation Commission. The method of discharging the obligation, both in respect of capital and of interest, so assumed shall be fixed by the Reparation Commission. Such method may take the form, *inter alia*, of the assumption by the Power to which the territory is ceded of Germany's liability for the German debt held by her nationals. But in the event of the method adopted involving any payments to the German Government, such payments shall be transferred to the Reparation Commission on account of the sums due for reparation so long as any balance in respect of such sums remains unpaid.

ARTICLE 255.

- (1) As an exception to the above provision and inasmuch as in 1871 Germany refused to undertake any portion of the burden of the French debt, France shall be, in respect of Alsace-Lorraine, exempt from any payment under Article 254.

(2) In the case of Poland that portion of the debt which, in the opinion of the Reparation Commission, is attributable to the measures taken by the German and Prussian Governments for the German colonisation of Poland shall be excluded from the apportionment to be made under Article 254.

(3) In the case of all ceded territories other than Alsace-Lorraine, that portion of the debt of the German Empire or German States which, in the opinion of the Reparation Commission, represents expenditure by the Governments of the German Empire or States upon the Government properties referred to in Article 256 shall be excluded from the apportionment to be made under Article 254.

ARTICLE 256.

Powers to which German territory is ceded shall acquire all property and possessions situated therein belonging to the German Empire or to the German States, and the value of such acquisitions shall be fixed by the Reparation Commission, and paid by the State acquiring the territory to the Reparation Commission for the credit of the German Government on account of the sums due for reparation.

For the purposes of this Article the property and possessions of the German Empire and States shall be deemed to include all the property of the Crown, the Empire or the States, and the private property of the former German Emperor and other Royal personages.

In view of the terms on which Alsace-Lorraine was ceded to Germany in 1871, France shall be exempt in respect thereof from making any payment or credit under this Article for any property or possessions of the German Empire or States situated therein.

Belgium also shall be exempt from making any payment or any credit under this Article for any property or possessions of the German Empire or States situated in German territory ceded to Belgium under the present Treaty.

ARTICLE 257.

In the case of the former German territories, including colonies, protectorates or dependencies, administered by a Mandatory under Article 22 of Part I (League of Nations) of the present Treaty, neither the territory nor the Mandatory Power shall be charged with any portion of the debt of the German Empire or States.

All property and possessions belonging to the German Empire or to the German States situated in such territories shall be transferred with the territories to the Mandatory Power in its capacity as such, and no payment shall be made nor any credit given to those Governments in consideration of this transfer.

For the purposes of this Article the property and possessions of the German Empire and of the German States shall be deemed to include all the property of the Crown, the Empire or the States and the private property of the former German Emperor and other Royal personages.

ARTICLE 258.

Germany renounces all rights accorded to her or her nationals by treaties, conventions or agreements, of whatsoever kind, to representation upon or participation in the control or administration of commissions, state banks, agencies or other financial or economic organisations of an international character, exercising powers of control or administration, and operating in any of the Allied or Associated States, or in Austria, Hungary, Bulgaria or Turkey, or in the dependencies of these States, or in the former Russian Empire.

ARTICLE 259.

(1) Germany agrees to deliver within one month from the date of the coming into force of the present Treaty, to such authority as the Principal Allied and Associated Powers may designate, the sum in gold which was to be deposited in the Reichsbank in the name of the Council of the Administration of the Ottoman Public Debt as security for the first issue of Turkish Government currency notes.

(2) Germany recognises her obligation to make annually for the period of twelve years the payments in gold for which provision is made in the German Treasury Bonds deposited by her from time to time in the name of the Council of the Administration of the Ottoman Public Debt as security for the second and subsequent issues of Turkish Government currency notes.

(3) Germany undertakes to deliver, within one month from the coming into force of the present Treaty, to such authority as the Principal Allied and Associated Powers may designate, the gold deposit constituted in the Reichsbank or elsewhere, representing the residue of the advance in gold agreed to on May 5, 1915, by the Council of the Administration of the Ottoman Public Debt to the Imperial Ottoman Government.

(4) Germany agrees to transfer to the Principal Allied and Associated Powers any title that she may have to the sum in gold and silver transmitted by her to the Turkish Ministry of Finance in November, 1918, in anticipation of the payment to be made in May, 1919, for the service of the Turkish Internal Loan.

(5) Germany undertakes to transfer to the Principal Allied and Associated Powers, within a period of one month from the coming into force of the present Treaty, any sums in gold transferred as pledge or as collateral security to the German Government or its nationals in connection with loans made by them to the Austro-Hungarian Government.

(6) Without prejudice to Article 292 of Part X (Economic Clauses) of the present Treaty, Germany confirms the renunciation provided for in Article XV of the Armistice of November 11, 1918, of any benefit disclosed by the Treaties of Bucharest and of Brest-Litovsk and by the treaties supplementary thereto.

Germany undertakes to transfer, either to Roumania or to the Principal Allied and Associated Powers as the case may be, all monetary instruments, specie, securities and negotiable instruments, or goods, which she has received under the aforesaid Treaties.

(7) The sums of money and all securities, instruments and goods of whatsoever nature, to be delivered, paid and transferred under the provisions of this Article, shall be disposed of by the Principal Allied and Associated Powers in a manner hereafter to be determined by those Powers.

ARTICLE 260.

Without prejudice to the renunciation of any rights by Germany on behalf of herself or of her nationals in the other provisions of the present Treaty, the Reparation Commission may within one year from the coming into force of the present Treaty demand that the German Government become possessed of any rights and interests of German nationals in any public utility undertaking or in any concession operating in Russia, China, Turkey, Austria, Hungary and Bulgaria, or in the possessions or dependencies of these States or in any territory formerly belonging to Germany or her allies, to be ceded by Germany or her allies to any Power or to be administered by a Mandatory under the present Treaty, and may require that the German Government transfer, within six months of the date of demand, all such rights and interests and any similar rights and interests the German Government may itself possess to the Reparation Commission.

Germany shall be responsible for indemnifying her nationals so dispossessed, and the Reparation Commission shall credit Germany, on account of sums due for reparation, with such sums in respect of the value of the transferred rights and interests as may be assessed by the Reparation Commission, and the German Government shall, within six months from the coming into force of the present Treaty, communicate to the Reparation Commission all such rights and interests, whether already granted, contingent or not yet exercised, and shall renounce on behalf of itself and its nationals in favour of the Allied and Associated Powers all such rights and interests which have not been so communicated.

ARTICLE 261.

Germany undertakes to transfer to the Allied and Associated Powers any claims she may have to payment or repayment by the Governments of Austria, Hungary, Bulgaria or Turkey, and, in particular, any claims which may arise, now or hereafter, from the fulfilment of undertakings made by Germany during the war to those Governments.

ARTICLE 262.

Any monetary obligation due by Germany arising out of the present Treaty and expressed in terms of gold marks shall be payable at the option of the creditors in pounds sterling payable in London; gold dollars of the United States of America payable in New York; gold francs payable in Paris; or gold lire payable in Rome.

For the purpose of this Article the gold coins mentioned above shall be defined as being of the weight and fineness of gold as enacted by law on January 1, 1914.

ARTICLE 263.

Germany gives a guarantee to the Brazilian Government that all sums representing the sale of coffee belonging to the State of Sao Paulo in the ports of Hamburg, Bremen, Antwerp and Trieste, which were deposited with the Bank of Bleichröder at Berlin, shall be reimbursed together with interest at the rate or rates agreed upon. Germany, having prevented the transfer of the sums in question to the State of Sao Paulo at the proper time, guarantees also that the reimbursement shall be effected at the rate of exchange of the day of the deposit.

PART X.

ECONOMIC CLAUSES.

SECTION I.

COMMERCIAL RELATIONS.

CHAPTER I.

CUSTOMS REGULATIONS, DUTIES AND RESTRICTIONS.

ARTICLE 264.

Germany undertakes that goods the produce or manufacture of any one of the Allied or Associated States imported into German territory, from whatsoever place arriving, shall not be subjected to other or higher duties or charges (including internal charges) than those to which the like goods the produce or manufacture of any other such State or of any other foreign country are subject.

Germany will not maintain or impose any prohibition or restriction on the importation into German territory of any goods the produce or manufacture of the territories of any one of the Allied or Associated States, from whatsoever place arriving, which shall not equally extend to the importation of the like goods the produce or manufacture of any other such State or of any other foreign country.

ARTICLE 265.

Germany further undertakes that, in the matter of the régime applicable on importation, no discrimination against the commerce of any of the Allied and Associated States as compared with any other of the said States or any other foreign country shall be made, even by indirect means, such as customs regulations or procedure, methods of verification or analysis conditions of payment of duties, tariff classification or interpretation, or the operation of monopolies.

ARTICLE 266.

In all that concerns exportation Germany undertakes that goods, natural products or manufactured articles, exported from German

territory to the territories of any one of the Allied or Associated States shall not be subjected to other or higher duties or charges (including internal charges) than those paid on the like goods exported to any other such State or to any other foreign country.

Germany will not maintain or impose any prohibition or restriction on the exportation of any goods sent from her territory to any one of the Allied or Associated States which shall not equally extend to the exportation of the like goods, natural products or manufactured articles, sent to any other such State or to any other foreign country.

ARTICLE 267.

Every favour, immunity or privilege in regard to the importation, exportation or transit of goods granted by Germany to any Allied or Associated State or to any other foreign country whatever shall simultaneously and unconditionally, without request and without compensation, be extended to all the Allied and Associated States.

ARTICLE 268.

The provisions of Articles 264 to 267 inclusive of this Chapter and of Article 323 of Part XII (Ports, Waterways and Railways) of the present Treaty are subject to the following exceptions:

(a) For a period of five years from the coming into force of the present Treaty, natural or manufactured products which both originate in and come from the territories of Alsace and Lorraine reunited to France shall, on importation into German customs territory, be exempt from all customs duty.

The French Government shall fix each year, by decree communicated to the German Government, the nature and amount of the products which shall enjoy this exemption.

The amount of each product which may be thus sent annually into Germany shall not exceed the average of the amounts sent annually in the years 1911-1913.

Further, during the period above mentioned the German Government shall allow the free export from Germany, and the free re-importation into Germany, exempt from all customs duties and other charges (including internal charges), of yarns, tissues, and other textile materials or textile products of any kind and in any condition, sent from Germany into the territories of Alsace or Lorraine, to be subjected there to any finishing process, such as bleaching, dyeing, printing, mercerisation, gassing, twisting or dressing.

(b) During a period of three years from the coming into force of the present Treaty natural or manufactured products which both originate in and come from Polish territories which before the war were part of Germany shall, on importation into German customs territory, be exempt from all customs duty.

The Polish Government shall fix each year, by decree communicated to the German Government, the nature and amount of the products which shall enjoy this exemption.

The amount of each product which may be thus sent annually into Germany shall not exceed the average of the amounts sent annually in the years 1911-1913.

(c) The Allied and Associated Powers reserve the right to require Germany to accord freedom from customs duty, on importation into German customs territory, to natural products and manufactured articles which both originate in and come from the Grand Duchy of Luxemburg, for a period of five years from the coming into force of the present Treaty.

The nature and amount of the products which shall enjoy the benefits of this régime shall be communicated each year to the German Government.

The amount of each product which may be thus sent annually into Germany shall not exceed the average of the amounts sent annually in the years 1911-1913.

ARTICLE 269.

During the first six months after the coming into force of the present Treaty, the duties imposed by Germany on imports from Allied and Associated States shall not be higher than the most favourable duties which were applied to imports into Germany on July 31, 1914.

During a further period of thirty months after the expiration of the first six months, this provision shall continue to be applied exclusively with regard to products which, being comprised in Section A of the First Category of the German Customs Tariff of December 25, 1902, enjoyed at the above-mentioned date (July 31, 1914) rates conventionalised by treaties with the Allied and Associated Powers, with the addition of all kinds of wine and vegetable oils, of artificial silk and of washed or scoured wool, whether or not they were the subject of special conventions before July 31, 1914.

ARTICLE 270.

The Allied and Associated Powers reserve the right to apply to German territory occupied by their troops a special customs régime as regards imports and exports, in the event of such a measure being necessary in their opinion in order to safeguard the economic interests of the population of these territories.

CHAPTER II.

SHIPPING.

ARTICLE 271.

As regards sea fishing, maritime coasting trade, and maritime towage, vessels of the Allied and Associated Powers shall enjoy, in German territorial waters, the treatment accorded to vessels of the most favoured nation.

ARTICLE 272.

Germany agrees that, notwithstanding any stipulation to the contrary contained in the Conventions relating to the North Sea fisheries and liquor traffic, all rights of inspection and police shall, in the case of fishing-boats of the Allied Powers, be exercised solely by ships belonging to those Powers.

ARTICLE 273.

In the case of vessels of the Allied or Associated Powers, all classes of certificates or documents relating to the vessel, which were recognised as valid by Germany before the war, or which may hereafter be recognised as valid by the principal maritime States, shall be recognised by Germany as valid and as equivalent to the corresponding certificates issued to German vessels.

A similar recognition shall be accorded to the certificates and documents issued to their vessels by the Governments of new States, whether they have a sea-coast or not, provided that such certificates and documents shall be issued in conformity with the general practice observed in the principal maritime States.

The High Contracting Parties agree to recognise the flag flown by the vessels of an Allied or Associated Power having no sea-coast which are registered at some one specified place situated in its territory: such place shall serve as the port of registry of such vessels.

CHAPTER III.

UNFAIR COMPETITION.

ARTICLE 274.

Germany undertakes to adopt all the necessary legislative and administrative measures to protect goods the produce or manufacture of any one of the Allied and Associated Powers from all forms of unfair competition in commercial transactions.

Germany undertakes to prohibit and repress by seizure and by other appropriate remedies the importation, exportation, manufacture, distribution, sale or offering for sale in its territory of all goods bearing upon themselves or their usual get-up or wrappings any marks, names, devices, or description whatsoever which are calculated to convey directly or indirectly a false indication of the origin, type, nature, or special characteristics of such goods.

ARTICLE 275.

Germany undertakes on condition that reciprocity is accorded in these matters to respect any law, or any administrative or judicial decision given in conformity with such law, in force in any Allied or Associated State and duly communicated to her by the proper authorities, defining or regulating the right to any regional appellation in respect of wine or spirits produced in the State to which the region belongs, or the conditions under which the use of any such appellation may be permitted; and the importation, exportation, manufacture, distribution, sale or offering for sale of products or articles bearing regional appellations inconsistent with such law or order shall be prohibited by the German Government and repressed by the measures prescribed in the preceding Article.

CHAPTER IV.

TREATMENT OF NATIONALS OF ALLIED AND ASSOCIATED POWERS.

ARTICLE 276.

Germany undertakes:

(a) Not to subject the nationals of the Allied and Associated Powers to any prohibition in regard to the exercise of occupations, professions, trade and industry, which shall not be equally applicable to all aliens without exception;

(b) Not to subject the nationals of the Allied and Associated Powers in regard to the rights referred to in paragraph (a) to any regulation or restriction which might contravene directly or indirectly the stipulations of the said paragraph, or which shall be other or more disadvantageous than those which are applicable to nationals of the most favoured nation;

(c) Not to subject the nationals of the Allied and Associated Powers, their property, rights or interests, including companies and associations in which they are interested, to any charge, tax or impost, direct or indirect, other or higher than those which are or may be imposed on her own nationals or their property, rights or interests;

(d) Not to subject the nationals of any one of the Allied and Associated Powers to any restriction which was not applicable on July 1, 1914, to the nationals of such Powers unless such restriction is likewise imposed on her own nationals.

ARTICLE 277.

The nationals of the Allied and Associated Powers shall enjoy in German territory a constant protection for their persons and for their property, rights and interests, and shall have free access to the courts of law.

ARTICLE 278.

Germany undertakes to recognise any new nationality which has been or may be acquired by her nationals under the laws of the Allied and Associated Powers and in accordance with the decisions of the competent authorities of these Powers pursuant to naturalisation laws or under treaty stipulations, and to regard such persons as having, in consequence of the acquisition of such new nationality, in all respects severed their allegiance to their country of origin.

ARTICLE 279.

The Allied and Associated Powers may appoint consuls-general, consuls, vice-consuls, and consular agents in German towns and ports. Germany undertakes to approve the designation of the consuls-general, consuls, vice-consuls, and consular agents, whose names shall be notified to her, and to admit them to the exercise of their functions in conformity with the usual rules and customs.

CHAPTER V.

GENERAL ARTICLES.

ARTICLE 280.

The obligations imposed on Germany by Chapter I and by Articles 271 and 272 of Chapter II above shall cease to have effect five years from the date of the coming into force of the present Treaty, unless otherwise provided in the text, or unless the Council of the League of Nations shall, at least twelve months before the expiration of that period, decide that these obligations shall be maintained for a further period with or without amendment.

Article 276 of Chapter IV shall remain in operation, with or without amendment, after the period of five years for such further period, if any, not exceeding five years, as may be determined by a majority of the Council of the League of Nations.

ARTICLE 281.

If the German Government engages in international trade, it shall not in respect thereof have or be deemed to have any rights, privileges or immunities of sovereignty.

SECTION II.

TREATIES.

ARTICLE 282.

From the coming into force of the present Treaty and subject to the provisions thereof the multilateral treaties, conventions and agreements of an economic or technical character enumerated below and in the subsequent Articles shall alone be applied as between Germany and those of the Allied and Associated Powers party thereto:

(1) Conventions of March 14, 1884, December 1, 1886, and March 23, 1887, and Final Protocol of July 7, 1887, regarding the protection of submarine cables.

(2) Convention of October 11, 1909, regarding the international circulation of motor-cars.

(3) Agreement of May 15, 1886, regarding the sealing of railway trucks subject to customs inspection, and Protocol of May 18, 1907.

(4) Agreement of May 15, 1886, regarding the technical standardisation of railways.

(5) Convention of July 5, 1890, regarding the publication of customs tariffs and the organisation of an International Union for the publication of customs tariffs.

(6) Convention of December 31, 1913, regarding the unification of commercial statistics.

(7) Convention of April 25, 1907, regarding the raising of the Turkish customs tariff.

(8) Convention of March 14, 1857, for the redemption of toll dues on the Sound and Belts.

- (9) Convention of June 22, 1861, for the redemption of the Stade Toll on the Elbe.
- (10) Convention of July 16, 1863, for the redemption of the toll dues on the Scheldt.
- (11) Convention of October 29, 1888, regarding the establishment of a definite arrangement guaranteeing the free use of the Suez Canal.
- (12) Conventions of September 23, 1910, respecting the unification of certain regulations regarding collisions and salvage at sea.
- (13) Convention of December 21, 1904, regarding the exemption of hospital ships from dues and charges in ports.
- (14) Convention of February 4, 1898, regarding the tonnage measurement of vessels for inland navigation.
- (15) Convention of September 26, 1906, for the suppression of nightwork for women.
- (16) Convention of September 26, 1906, for the suppression of the use of white phosphorus in the manufacture of matches.
- (17) Conventions of May 18, 1904, and May 4, 1910, regarding the suppression of the White Slave Traffic.
- (18) Convention of May 4, 1910, regarding the suppression of obscene publications.
- (19) Sanitary Conventions of January 30, 1892, April 15, 1893, April 3, 1894, March 19, 1897, and December 3, 1903.
- (20) Convention of May 20, 1875, regarding the unification and improvement of the metric system.
- (21) Convention of November 29, 1906, regarding the unification of pharmacopœial formulæ for potent drugs.
- (22) Convention of November 16 and 19, 1885, regarding the establishment of a concert pitch.
- (23) Convention of June 7, 1905, regarding the creation of an International Agricultural Institute at Rome.
- (24) Conventions of November 3, 1881, and April 15, 1889, regarding precautionary measures against phylloxera.
- (25) Convention of March 19, 1902, regarding the protection of birds useful to agriculture.
- (26) Convention of June 12, 1902, as to the protection of minors.

ARTICLE 283.

From the coming into force of the present Treaty the High Contracting Parties shall apply the conventions and agreements hereinafter mentioned, in so far as concerns them, on condition that the special stipulations contained in this Article are fulfilled by Germany.

Postal Conventions:

Conventions and agreements of the Universal Postal Union concluded at Vienna, July 4, 1891.

Conventions and agreements of the Postal Union signed at Washington, June 15, 1897.

Conventions and agreements of the Postal Union signed at Rome, May 26, 1906.

Telegraphic Conventions:

International Telegraphic Conventions signed at St. Petersburg July 10/22, 1875.

Regulations and Tariffs drawn up by the International Telegraphic Conference, Lisbon, June 11, 1908.

Germany undertakes not to refuse her assent to the conclusion by the new States of the special arrangements referred to in the conventions and agreements relating to the Universal Postal Union and to the International Telegraphic Union, to which the said new States have adhered or may adhere.

ARTICLE 284.

From the coming into force of the present Treaty the High Contracting Parties shall apply, in so far as concerns them, the International Radio-Telegraphic Convention of July 5, 1912, on condition that Germany fulfils the provisional regulations which will be indicated to her by the Allied and Associated Powers.

If within five years after the coming into force of the present Treaty a new convention regulating international radio-telegraphic communications should have been concluded to take the place of the Convention of July 5, 1912, this new convention shall bind Germany, even if Germany should refuse either to take part in drawing up the convention, or to subscribe thereto.

This new convention will likewise replace the provisional regulations in force.

ARTICLE 285.

From the coming into force of the present Treaty, the High Contracting Parties shall apply in so far as concerns them and under the conditions stipulated in Article 272, the conventions hereinafter mentioned:

(1) The Conventions of May 6, 1882, and February 1, 1889, regulating the fisheries in the North Sea outside territorial waters.

(2) The Conventions and Protocols of November 16, 1887, February 14, 1893, and April 11, 1894, regarding the North Sea liquor traffic.

ARTICLE 286.

The International Convention of Paris of March 20, 1883, for the protection of industrial property, revised at Washington on June 2, 1911; and the International Convention of Berne of September 9, 1886, for the protection of literary and artistic works, revised at Berlin on November 13, 1908, and completed by the additional Protocol signed at Berne on March 20, 1914, will again come into effect as from the coming into force of the present Treaty, in so far as they are not affected or modified by the exceptions and restrictions resulting therefrom.

ARTICLE 287.

From the coming into force of the present Treaty the High Contracting Parties shall apply, in so far as concerns them, the Conven-

tion of the Hague of July 17, 1905, relating to civil procedure. This renewal, however, will not apply to France, Portugal and Roumania.

ARTICLE 288.

The special rights and privileges granted to Germany by Article 3 of the Convention of December 2, 1899, relating to Samoa shall be considered to have terminated on August 4, 1914.

ARTICLE 289.

Each of the Allied or Associated Powers, being guided by the general principles or special provisions of the present Treaty, shall notify to Germany the bilateral treaties or conventions which such Allied or Associated Power wishes to revive with Germany.

The notification referred to in the present Article shall be made either directly or through the intermediary of another Power. Receipt thereof shall be acknowledged in writing by Germany. The date of the revival shall be that of the notification.

The Allied and Associated Powers undertake among themselves not to revive with Germany any conventions or treaties which are not in accordance with the terms of the present Treaty.

The notification shall mention any provisions of the said conventions and treaties which, not being in accordance with the terms of the present Treaty, shall not be considered as revived.

In case of any difference of opinion, the League of Nations will be called on to decide.

A period of six months from the coming into force of the present Treaty is allowed to the Allied and Associated Powers within which to make the notification.

Only those bilateral treaties and conventions which have been the subject of such a notification shall be revived between the Allied and Associated Powers and Germany; all the others are and shall remain abrogated.

The above regulations apply to all bilateral treaties or conventions existing between all the Allied and Associated Powers signatory to the present Treaty and Germany, even if the said Allied and Associated Powers have not been in a state of war with Germany.

ARTICLE 290.

Germany recognises that all the treaties, conventions or agreements which she has concluded with Austria, Hungary, Bulgaria and Turkey since August 1, 1914, until the coming into force of the present Treaty are and remain abrogated by the present Treaty.

ARTICLE 291.

Germany undertakes to secure to the Allied and Associated Powers, and to the officials and nationals of the said Powers, the enjoyment of all the rights and advantages of any kind which she may have granted to Austria, Hungary, Bulgaria or Turkey, or to the officials and nationals of these States by treaties, conventions or a

rangements concluded before August 1, 1914, so long as those treaties, conventions or arrangements remain in force.

The Allied and Associated Powers reserve the right to accept or not the enjoyment of these rights and advantages.

ARTICLE 292.

Germany recognises that all treaties, conventions or arrangements which she concluded with Russia, or with any State or Government of which the territory previously formed a part of Russia, or with Roumania, before August 1, 1914, or after that date until coming into force of the present Treaty, are and remain abrogated.

ARTICLE 293.

Should an Allied or Associated Power, Russia, or a State or Government of which the territory formerly constituted a part of Russia, have been forced since August 1, 1914, by reason of military occupation or by any other means or for any other cause, to grant or to allow to be granted by the act of any public authority, concessions, privileges and favours of any kind to Germany or to a German national, such concessions, privileges and favours are *ipso facto* annulled by the present Treaty.

No claims or indemnities which may result from this annulment shall be charged against the Allied or Associated Powers or the Powers, States, Governments or public authorities which are released from their engagements by the present Article.

ARTICLE 294.

From the coming into force of the present Treaty Germany undertakes to give the Allied and Associated Powers and their nationals the benefit *ipso facto* of the rights and advantages of any kind which she has granted by treaties, conventions, or arrangements to non-belligerent States or their nationals since August 1, 1914, until the coming into force of the present Treaty, so long as those treaties, conventions or arrangements remain in force.

ARTICLE 295.

Those of the High Contracting Parties who have not yet signed, or who have signed but not yet ratified, the Opium Convention signed at The Hague on January 23, 1912, agree to bring the said Convention into force, and for this purpose to enact the necessary legislation without delay and in any case within a period of twelve months from the coming into force of the present Treaty.

Furthermore, they agree that ratification of the present Treaty should in the case of Powers which have not yet ratified the Opium Convention be deemed in all respects equivalent to the ratification of that Convention and to the signature of the Special Protocol which was opened at The Hague in accordance with the resolutions adopted by the Third Opium Conference in 1914 for bringing the said Convention into force.

For this purpose the Government of the French Republic will communicate to the Government of the Netherlands a certified copy of the protocol of the deposit of ratifications of the present Treaty, and will invite the Government of the Netherlands to accept and deposit the said certified copy as if it were a deposit of ratifications of the Opium Convention and a signature of the Additional Protocol of 1914.

SECTION III.

DEBTS.

ARTICLE 296.

There shall be settled through the intervention of clearing offices to be established by each of the High Contracting Parties within three months of the notification referred to in paragraph (c) hereafter the following classes of pecuniary obligations:

(1) Debts payable before the war and due by a national of one of the Contracting Powers, residing within its territory, to a national of an Opposing Power, residing within its territory;

(2) Debts which became payable during the war to nationals of one Contracting Power residing within its territory and arose out of transactions or contracts with the nationals of an Opposing Power, resident within its territory, of which the total or partial execution was suspended on account of the declaration of war;

(3) Interest which has accrued due before and during the war to a national of one of the Contracting Powers in respect of securities issued by an Opposing Power, provided that the payment of interest on such securities to the nationals of that Power or to neutrals has not been suspended during the war;

(4) Capital sums which have become payable before and during the war to nationals of one of the Contracting Powers in respect of securities issued by one of the Opposing Powers, provided that the payment of such capital sums to nationals of that Power or to neutrals has not been suspended during the war.

The proceeds of liquidation of enemy property, rights and interests mentioned in Section IV and in the Annex thereto will be accounted for through the Clearing Offices, in the currency and at the rate of exchange hereinafter provided in paragraph (d), and disposed of by them under the conditions provided by the said Section and Annex.

The settlements provided for in this Article shall be effected according to the following principles and in accordance with the Annex to this Section:

(a) Each of the High Contracting Parties shall prohibit, as from the coming into force of the present Treaty, both the payment and the acceptance of payment of such debts, and also all communications between the interested parties with regard to the settlement of the said debts otherwise than through the Clearing Offices;

(b) Each of the High Contracting Parties shall be respectively responsible for the payment of such debts due by its nationals, except in the cases where before the war the debtor was in a state of bankruptcy or failure, or had given formal indication of insolvency or

where the debt was due by a company whose business has been liquidated under emergency legislation during the war. Nevertheless, debts due by the inhabitants of territory invaded or occupied by the enemy before the Armistice will not be guaranteed by the States of which those territories form part;

(c) The sums due to the nationals of one of the High Contracting Parties by the nationals of an Opposing State will be debited to the Clearing Office of the country of the debtor, and paid to the creditor by the Clearing Office of the country of the creditor;

(d) Debts shall be paid or credited in the currency of such one of the Allied and Associated Powers, their colonies or protectorates, or the British Dominions or India, as may be concerned. If the debts are payable in some other currency they shall be paid or credited in the currency of the country concerned, whether an Allied or Associated Power, Colony, Protectorate, British Dominion or India, at the pre-war rate of exchange.

For the purpose of this provision the pre-war rate of exchange shall be defined as the average cable transfer rate prevailing in the Allied or Associated country concerned during the month immediately preceding the outbreak of war between the said country concerned and Germany.

If a contract provides for a fixed rate of exchange governing the conversion of the currency in which the debt is stated into the currency of the Allied or Associated country concerned, then the above provisions concerning the rate of exchange shall not apply.

In the case of new States the currency in which and the rate of exchange at which debts shall be paid or credited shall be determined by the Reparation Commission provided for in Part VIII (Reparation);

(e) The provisions of this Article and of the Annex hereto shall not apply as between Germany on the one hand and any one of the Allied and Associated Powers, their colonies or protectorates, or any one of the British Dominions or India on the other hand, unless within a period of one month from the deposit of the ratification of the present Treaty by the Power in question, or of the ratification on behalf of such Dominion or of India, notice to that effect is given to Germany by the Government of such Allied or Associated Power or of such Dominion or of India as the case may be;

(f) The Allied and Associated Powers who have adopted this Article and the Annex hereto may agree between themselves to apply them to their respective nationals established in their territory so far as regards matters between their nationals and German nationals. In this case the payments made by application of this provision will be subject to arrangements between the Allied and Associated Clearing Offices concerned.

ANNEX.

1.

Each of the High Contracting Parties will, within three months from the notification provided for in Article 296, paragraph (e), establish a Clearing Office for the collection and payment of enemy debts.

Local Clearing Offices may be established for any particular portion of the territories of the High Contracting Parties. Such local Clearing Offices may perform all the functions of a central Clearing Office in their respective districts, except that all transactions with the Clearing Office in the Opposing State must be effected through the central Clearing Office.

2.

In this Annex the pecuniary obligations referred to in the first paragraph of Article 296 are described "as enemy debts", the persons from whom the same are due as "enemy debtors", the persons to whom they are due as "enemy creditors", the Clearing Office in the country of the creditor is called the "Creditor Clearing Office", and the Clearing Office in the country of the debtor is called the "Debtor Clearing Office."

3.

The High Contracting Parties will subject contraventions of paragraph (a) of Article 296 to the same penalties as are at present provided by their legislation for trading with the enemy. They will similarly prohibit within their territory all legal process relating to payment of enemy debts, except in accordance with the provisions of this Annex.

4.

The Government guarantee specified in paragraph (b) of Article 296 shall take effect whenever, for any reason, a debt shall not be recoverable, except in a case where at the date of the outbreak of war the debt was barred by the laws of prescription in force in the country of the debtor, or where the debtor was at that time in a state of bankruptcy or failure or had given formal indication of insolvency, or where the debt was due by a company whose business has been liquidated under emergency legislation during the war. In such case the procedure specified by this Annex shall apply to payment of the dividends.

The terms "bankruptcy" and "failure" refer to the application of legislation providing for such juridical conditions. The expression "formal indication of insolvency" bears the same meaning as it has in English law.

5.

Creditors shall give notice to the Creditor Clearing Office within six months of its establishment of debts due to them, and shall furnish the Clearing Office with any documents and information required of them.

The High Contracting Parties will take all suitable measures to trace and punish collusion between enemy creditors and debtors. The Clearing Offices will communicate to one another any evidence and information which might help the discovery and punishment of such collusion.

The High Contracting Parties will facilitate as much as possible postal and telegraphic communication at the expense of the parties

concerned and through the intervention of the Clearing Offices between debtors and creditors desirous of coming to an agreement as to the amount of their debt.

The Creditor Clearing Office will notify the Debtor Clearing Office of all debts declared to it. The Debtor Clearing Office will, in due course, inform the Creditor Clearing Office which debts are admitted and which debts are contested. In the latter case, the Debtor Clearing Office will give the grounds for the non-admission of debt.

6.

When a debt has been admitted, in whole or in part, the Debtor Clearing Office will at once credit the Creditor Clearing Office with the amount admitted, and at the same time notify it of such credit.

7.

The debt shall be deemed to be admitted in full and shall be credited forthwith to the Creditor Clearing Office unless within three months from the receipt of the notification or such longer time as may be agreed to by the Creditor Clearing Office notice has been given by the Debtor Clearing Office that it is not admitted.

8.

When the whole or part of a debt is not admitted the two Clearing Offices will examine into the matter jointly and will endeavour to bring the parties to an agreement.

9.

The Creditor Clearing Office will pay to the individual creditor the sums credited to it out of the funds placed at its disposal by the Government of its country and in accordance with the conditions fixed by the said Government, retaining any sums considered necessary to cover risks, expenses or commissions.

10.

Any person having claimed payment of an enemy debt which is not admitted in whole or in part shall pay to the clearing office, by way of fine, interest at 5 per cent. on the part not admitted. Any person having unduly refused to admit the whole or part of a debt claimed from him shall pay, by way of fine, interest at 5 per cent. on the amount with regard to which his refusal shall be disallowed.

Such interest shall run from the date of expiration of the period provided for in paragraph 7 until the date on which the claim shall have been disallowed or the debt paid.

Each Clearing Office shall in so far as it is concerned take steps to collect the fines above provided for, and will be responsible if such fines cannot be collected.

The fines will be credited to the other Clearing Office, which shall retain them as a contribution towards the cost of carrying out the present provisions.

11.

The balance between the Clearing Offices shall be struck monthly and the credit balance paid in cash by the debtor State within a week.

Nevertheless, any credit balances which may be due by one or more of the Allied and Associated Powers shall be retained until complete payment shall have been effected of the sums due to the Allied or Associated Powers or their nationals on account of the war.

12.

To facilitate discussion between the Clearing Offices each of them shall have a representative at the place where the other is established.

13.

Except for special reasons all discussions in regard to claims will, so far as possible, take place at the Debtor Clearing Office.

14.

In conformity with Article 296, paragraph (b), the High Contracting Parties are responsible for the payment of the enemy debts owing by their nationals.

The Debtor Clearing Office will therefore credit the Creditor Clearing Office with all debts admitted, even in case of inability to collect them from the individual debtor. The Governments concerned will, nevertheless, invest their respective Clearing Offices with all necessary powers for the recovery of debts which have been admitted.

As an exception, the admitted debts owing by persons having suffered injury from acts of war shall only be credited to the Creditor Clearing Office when the compensation due to the person concerned in respect of such injury shall have been paid.

15.

Each Government will defray the expenses of the Clearing Office set up in its territory, including the salaries of the staff.

16.

Where the two Clearing Offices are unable to agree whether a debt claimed is due, or in case of a difference between an enemy debtor and an enemy creditor or between the Clearing Offices, the dispute shall either be referred to arbitration if the parties so agree under conditions fixed by agreement between them, or referred to the Mixed Arbitral Tribunal provided for in Section VI hereafter.

At the request of the Creditor Clearing Office the dispute may, however, be submitted to the jurisdiction of the Courts of the place of domicile of the debtor.

Recovery of sums found by the Mixed Arbitral Tribunal, the Court, or the Arbitration Tribunal to be due shall be effected through the Clearing Offices as if these sums were debts admitted by the Debtor Clearing Office.

Each of the Governments concerned shall appoint an agent who will be responsible for the presentation to the Mixed Arbitral Tribunal of the cases conducted on behalf of its Clearing Office. This agent will exercise a general control over the representatives or counsel employed by its nationals.

Decisions will be arrived at on documentary evidence, but it will be open to the Tribunal to hear the parties in person, or according to their preference by their representatives approved by the two Governments, or by the agent referred to above, who shall be competent to intervene along with the party or to re-open and maintain a claim abandoned by the same.

The Clearing Offices concerned will lay before the Mixed Arbitral Tribunal all the information and documents in their possession, so as to enable the Tribunal to decide rapidly on the cases which are brought before it.

Where one of the parties concerned appeals against the joint decision of the two Clearing Offices he shall make a deposit against the costs, which deposit shall only be refunded when the first judgment is modified in favour of the appellant and in proportion to the success he may attain, his opponent in case of such a refund being required to pay an equivalent proportion of the costs and expenses. Security accepted by the Tribunal may be substituted for a deposit.

A fee of 5 per cent. of the amount in dispute shall be charged in respect of all cases brought before the Tribunal. This fee shall, unless the Tribunal directs otherwise, be borne by the unsuccessful party. Such fee shall be added to the deposit referred to. It is also independent of the security.

The Tribunal may award to one of the parties a sum in respect of the expenses of the proceedings.

Any sum payable under this paragraph shall be credited to the Clearing Office of the successful party as a separate item.

With a view to the rapid settlement of claims, due regard shall be paid in the appointment of all persons connected with the Clearing Offices or with the Mixed Arbitral Tribunal to their knowledge of the language of the other country concerned.

Each of the Clearing Offices will be at liberty to correspond with the other and to forward documents in its own language.

22.

Subject to any special agreement to the contrary between the Governments concerned, debts shall carry interest in accordance with the following provisions:

Interest shall not be payable on sums of money due by way of dividend, interest or other periodical payments which themselves represent interest on capital.

The rate of interest shall be 5 per cent. per annum except in cases where, by contract, law or custom, the creditor is entitled to payment of interest at a different rate. In such cases the rate to which he is entitled shall prevail.

Interest shall run from the date of commencement of hostilities (or, if the sum of money to be recovered fell due during the war, from the date at which it fell due) until the sum is credited to the Clearing Office of the creditor.

Sums due by way of interest shall be treated as debts admitted by the Clearing Offices and shall be credited to the Creditor Clearing Office in the same way as such debts.

23.

Where by decision of the Clearing Offices or the Mixed Arbitral Tribunal a claim is held not to fall within Article 296, the creditor shall be at liberty to prosecute the claim before the Courts or to take such other proceedings as may be open to him.

The presentation of a claim to the Clearing Office suspends the operation of any period of prescription.

24.

The High Contracting Parties agree to regard the decisions of the Mixed Arbitral Tribunal as final and conclusive, and to render them binding upon their nationals.

25.

In any case where a Creditor Clearing Office declines to notify a claim to the Debtor Clearing Office, or to take any step provided for in this Annex, intended to make effective in whole or in part a request of which it has received due notice, the enemy creditor shall be entitled to receive from the Clearing Office a certificate setting out the amount of the claim, and shall then be entitled to prosecute the claim before the courts or to take such other proceedings as may be open to him.

SECTION IV.

PROPERTY, RIGHTS AND INTERESTS.

ARTICLE 297.

The question of private property, rights and interests in an enemy country shall be settled according to the principles laid down in this Section and to the provisions of the Annex hereto.

(a) The exceptional war measures and measures of transfer (defined in paragraph 3 of the Annex hereto) taken by Germany with respect to the property, rights and interests of nationals of Allied or Associated Powers, including companies and associations in which they are interested, when liquidation has not been completed, shall be immediately discontinued or stayed and the property, rights and interests concerned restored to their owners, who shall enjoy full rights therein in accordance with the provisions of Article 298.

(b) Subject to any contrary stipulations which may be provided for in the present Treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights and interests belonging at the date of the coming into force of the present Treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates, including territories ceded to them by the present Treaty.

The liquidation shall be carried out in accordance with the laws of the Allied or Associated State concerned, and the German owner shall not be able to dispose of such property, rights or interests nor to subject them to any charge without the consent of that State.

German nationals who acquire *ipso facto* the nationality of an Allied or Associated Power in accordance with the provisions of the present Treaty will not be considered as German nationals within the meaning of this paragraph.

(c) The price or the amount of compensation in respect of the exercise of the right referred to in the preceding paragraph (b) will be fixed in accordance with the methods of sale or valuation adopted by the laws of the country in which the property has been retained or liquidated.

(d) As between the Allied and Associated Powers or their nationals on the one hand and Germany or her nationals on the other hand, all the exceptional war measures, or measures of transfer, or acts done or to be done in execution of such measures as defined in paragraphs 1 and 3 of the Annex hereto shall be considered as final and binding upon all persons except as regards the reservations laid down in the present Treaty.

(e) The nationals of Allied and Associated Powers shall be entitled to compensation in respect of damage or injury inflicted upon their property, rights or interests, including any company or association in which they are interested, in German territory as it existed on August 1, 1914, by the application either of the exceptional war measures or measures of transfer mentioned in paragraphs 1 and 3 of the Annex hereto. The claims made in this respect by such nationals shall be investigated, and the total of the compensation shall be determined by the Mixed Arbitral Tribunal provided for in Section

VI or by an Arbitrator appointed by that Tribunal. This compensation shall be borne by Germany, and may be charged upon the property of German nationals within the territory or under the control of the claimant's State. This property may be constituted as a pledge for enemy liabilities under the conditions fixed by paragraph 4 of the Annex hereto. The payment of this compensation may be made by the Allied or Associated State, and the amount will be debited to Germany.

(f) Whenever a national of an Allied or Associated Power is entitled to property which has been subjected to a measure of transfer in German territory and expresses a desire for its restitution, his claim for compensation in accordance with paragraph (e) shall be satisfied by the restitution of the said property if it still exists in specie.

In such case Germany shall take all necessary steps to restore the evicted owner to the possession of his property, free from all encumbrances or burdens with which it may have been charged after the liquidation, and to indemnify all third parties injured by the restitution.

If the restitution provided for in this paragraph cannot be effected, private agreements arranged by the intermediation of the Powers concerned or the Clearing Offices provided for in the Annex to Section III may be made, in order to secure that the national of the Allied or Associated Power may secure compensation for the injury referred to in paragraph (e) by the grant of advantages or equivalents which he agrees to accept in place of the property, rights or interests of which he was deprived.

Through restitution in accordance with this Article, the price or the amount of compensation fixed by the application of paragraph (e) will be reduced by the actual value of the property restored, account being taken of compensation in respect of loss of use or deterioration.

(g) The rights conferred by paragraph (f) are reserved to owners who are nationals of Allied or Associated Powers within whose territory legislative measures prescribing the general liquidation of enemy property, rights or interests were not applied before the signature of the Armistice.

(h) Except in cases where, by application of paragraph (f), restitutions in specie have been made, the net proceeds of sales of enemy property, rights or interests wherever situated carried out either by virtue of war legislation, or by application of this Article, and in general all cash assets of enemies, shall be dealt with as follows:

(1) As regards Powers adopting Section III and the Annex thereto, the said proceeds and cash assets shall be credited to the Power of which the owner is a national, through the Clearing Office established thereunder; any credit balance in favour of Germany resulting therefrom shall be dealt with as provided in Article 243.

(2) As regards Powers not adopting Section III and the Annex thereto, the proceeds of the property, rights and interests, and the cash assets, of the nationals of Allied or Associated Powers held by Germany shall be paid immediately to the person entitled thereto or to his Government; the proceeds of the property, rights and interests, and the cash assets, of German nationals received by an

Allied or Associated Power shall be subject to disposal by such Power in accordance with its laws and regulations and may be applied in payment of the claims and debts defined by this Article or paragraph 4 of the Annex hereto. Any property, rights and interests or proceeds thereof or cash assets not used as above provided may be retained by the said Allied or Associated Power and if retained the cash value thereof shall be dealt with as provided in Article 243.

In the case of liquidations effected in new States, which are signatories of the present Treaty as Allied and Associated Powers, or in States which are not entitled to share in the reparation payments to be made by Germany, the proceeds of liquidations effected by such States shall, subject to the rights of the Reparation Commission under the present Treaty, particularly under Articles 235 and 260, be paid direct to the owner. If on the application of that owner, the Mixed Arbitral Tribunal, provided for by Section VI of this Part, or an arbitrator appointed by that Tribunal, is satisfied that the conditions of the sale or measures taken by the Government of the State in question outside its general legislation were unfairly prejudicial to the price obtained, they shall have discretion to award to the owner equitable compensation to be paid by that State.

(i) Germany undertakes to compensate her nationals in respect of the sale or retention of their property, rights or interests in Allied or Associated States.

(j) The amount of all taxes and imposts upon capital levied or to be levied by Germany on the property, rights and interests of the nationals of the Allied or Associated Powers from November 11, 1918, until three months from the coming into force of the present Treaty, or, in the case of property, rights or interests which have been subjected to exceptional measures of war, until restitution in accordance with the present Treaty, shall be restored to the owners.

ARTICLE 298.

Germany undertakes, with regard to the property, rights and interests, including companies and associations in which they were interested, restored to nationals of Allied and Associated Powers in accordance with the provisions of Article 297, paragraph (a) or (f):

(a) to restore and maintain, except as expressly provided in the present Treaty, the property, rights and interests of the nationals of Allied or Associated Powers in the legal position obtaining in respect of the property, rights and interests of German nationals under the laws in force before the war;

(b) not to subject the property, rights or interests of the nationals of the Allied or Associated Powers to any measures in derogation of property rights which are not applied equally to the property, rights and interests of German nationals, and to pay adequate compensation in the event of the application of these measures.

ANNEX.

1.

In accordance with the provisions of Article 297, paragraph (d), the validity of vesting orders and of orders for the winding up of businesses or companies, and of any other orders, directions, decisions or instructions of any court or any department of the Government of any of the High Contracting Parties made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests is confirmed. The interests of all persons shall be regarded as having been effectively dealt with by any order, direction, decision or instruction dealing with property in which they may be interested, whether or not such interests are specifically mentioned in the order, direction, decision, or instruction. No question shall be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, direction, decision or instruction. Every action taken with regard to any property, business, or company, whether as regards its investigation, sequestration, compulsory administration, use, requisition, supervision, or winding up, the sale or management of property, rights or interests, the collection or discharge of debts, the payment of costs, charges or expenses, or any other matter whatsoever, in pursuance of orders, directions, decisions, or instructions of any court or of any department of the Government of any of the High Contracting Parties, made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights or interests, is confirmed. Provided that the provisions of this paragraph shall not be held to prejudice the titles to property heretofore acquired in good faith and for value and in accordance with the laws of the country in which the property is situated by nationals of the Allied and Associated Powers.

The provisions of this paragraph do not apply to such of the above-mentioned measures as have been taken by the German authorities in invaded or occupied territory, nor to such of the above mentioned measures as have been taken by Germany or the German authorities since November 11, 1918, all of which shall be void.

2.

No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of such a Power by Germany or by any German national wherever resident in respect of any act or omission with regard to his property, rights or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power.

3.

In Article 297 and this Annex the expression "exceptional war measures" includes measures of all kinds, legislative, administrative, judicial or others, that have been taken or will be taken hereafter with regard to enemy property, and which have had or will have the effect of removing from the proprietors the power of disposition over their property, though without affecting the ownership, such as measures of supervision, of compulsory administration, and of sequestration; or measures which have had or will have as an object the seizure of, the use of, or the interference with enemy assets, for whatsoever motive, under whatsoever form or in whatsoever place. Acts in the execution of these measures include all detentions, instructions, orders or decrees of Government departments or courts applying these measures to enemy property, as well as acts performed by any person connected with the administration or the supervision of enemy property, such as the payment of debts, the collecting of credits, the payment of any costs, charges or expenses, or the collecting of fees.

Measures of transfer are those which have affected or will affect the ownership of enemy property by transferring it in whole or in part to a person other than the enemy owner, and without his consent, such as measures directing the sale, liquidation, or devolution of ownership in enemy property, or the cancelling of titles or securities.

4.

All property, rights and interests of German nationals within the territory of any Allied or Associated Power and the net proceeds of their sale, liquidation or other dealing therewith may be charged by that Allied or Associated Power in the first place with payment of amounts due in respect of claims by the nationals of that Allied or Associated Power with regard to their property, rights and interests, including companies and associations in which they are interested, in German territory, or debts owing to them by German nationals, and with payment of claims growing out of acts committed by the German Government or by any German authorities since July 31, 1914, and before that Allied or Associated Power entered into the war. The amount of such claims may be assessed by an arbitrator appointed by Mr. Gustave Ador, if he is willing, or if no such appointment is made by him, by an arbitrator appointed by the Mixed Arbitral Tribunal provided for in Section VI. They may be charged in the second place with payment of the amounts due in respect of claims by the nationals of such Allied or Associated Power with regard to their property, rights and interests in the territory of other enemy Powers, in so far as those claims are otherwise unsatisfied.

5.

Notwithstanding the provisions of Article 297, where immediately before the outbreak of war a company incorporated in an Allied or Associated State had rights in common with a company controlled

by it and incorporated in Germany to the use of trade-marks in third countries, or enjoyed the use in common with such company of unique means of reproduction of goods or articles for sale in third countries, the former company shall alone have the right to use these trade marks in third countries to the exclusion of the German company, and these unique means of reproduction shall be handed over to the former company, notwithstanding any action taken under German war legislation with regard to the latter company or its business, industrial property or shares. Nevertheless, the former company, if requested, shall deliver to the latter company derivative copies permitting the continuation of reproduction of articles for use within German territory.

6.

Up to the time when restitution is carried out in accordance with Article 297, Germany is responsible for the conservation of property, rights and interests of the nationals of Allied or Associated Powers, including companies and associations in which they are interested, that have been subjected by her to exceptional war measures.

7.

Within one year from the coming into force of the present Treaty the Allied or Associated Powers will specify the property, rights and interests over which they intend to exercise the right provided in Article 297, paragraph (f).

8.

The restitution provided in Article 297 will be carried out by order of the German Government or of the authorities which have been substituted for it. Detailed accounts of the action of administrators shall be furnished to the interested persons by the German authorities upon request, which may be made at any time after the coming into force of the present Treaty.

9.

Until completion of the liquidation provided for by Article 297, paragraph (b), the property, rights and interests of German nationals will continue to be subject to exceptional war measures that have been or will be taken with regard to them.

10.

Germany will, within six months from the coming into force of the present Treaty, deliver to each Allied or Associated Power all securities, certificates, deeds, or other documents of title held by its nationals and relating to property, rights or interests situated in the territory of that Allied or Associated Power, including any shares, stock, debentures, debenture stock, or other obligations of any company incorporated in accordance with the laws of that Power.

Germany will at any time on demand of any Allied or Associated Power furnish such information as may be required with regard to

the property, rights and interests of German nationals within the territory of such Allied or Associated Power, or with regard to any transactions concerning such property, rights or interests effected since July 1, 1914.

11.

The expression "cash assets" includes all deposits or funds established before or after the declaration of war, as well as all assets coming from deposits, revenues, or profits collected by administrators, sequestrators, or others from funds placed on deposit or otherwise, but does not include sums belonging to the Allied or Associated Powers or to their component States, Provinces, or Municipalities.

12.

All investments wheresoever effected with the cash assets of nationals of the High Contracting Parties, including companies and associations in which such nationals were interested, by persons responsible for the administration of enemy properties or having control over such administration, or by order of such persons or of any authority whatsoever shall be annulled. These cash assets shall be accounted for irrespective of any such investment.

13.

Within one month from the coming into force of the present Treaty, or on demand at any time, Germany will deliver to the Allied and Associated Powers all accounts, vouchers, records, documents and information of any kind which may be within German territory, and which concern the property, rights and interests of the nationals of those Powers, including companies and associations in which they are interested, that have been subjected to an exceptional war measure, or to a measure of transfer either in German territory or in territory occupied by Germany or her allies.

The controllers, supervisors, managers, administrators, sequestrators, liquidators and receivers shall be personally responsible under guarantee of the German Government for the immediate delivery in full of these accounts and documents, and for their accuracy.

14.

The provisions of Article 297 and this Annex relating to property, rights and interests in an enemy country, and the proceeds of the liquidation thereof, apply to debts, credits and accounts, Section III regulating only the method of payment.

In the settlement of matters provided for in Article 297 between Germany and the Allied or Associated States, their colonies or protectorates, or any one of the British Dominions or India, in respect of any of which a declaration shall not have been made that they adopt Section III, and between their respective nationals, the provisions of Section III respecting the currency in which payment is to be made and the rate of exchange and of interest shall apply unless the Government of the Allied or Associated Power concerned

shall within six months of the coming into force of the present Treaty notify Germany that the said provisions are not to be applied.

15.

The provisions of Article 297 and this Annex apply to industrial, literary and artistic property which has been or will be dealt with in the liquidation of property, rights, interests, companies or businesses under war legislation by the Allied or Associated Powers, or in accordance with the stipulations of Article 297, paragraph (b)

SECTION V.

CONTRACTS, PRESCRIPTIONS, JUDGMENTS.

ARTICLE 299.

(a) Any contract concluded between enemies shall be regarded as having been dissolved as from the time when any two of the parties became enemies, except in respect of any debt or other pecuniary obligation arising out of any act done or money paid thereunder, and subject to the exceptions and special rules with regard to particular contracts or classes of contracts contained herein or in the Annex hereto.

(b) Any contract of which the execution shall be required in the general interest, within six months from the date of the coming into force of the present Treaty, by the Allied or Associated Governments of which one of the parties is a national, shall be excepted from dissolution under this Article.

When the execution of the contract thus kept alive would, owing to the alteration of trade conditions, cause one of the parties substantial prejudice the Mixed Arbitral Tribunal provided for by Section VI shall be empowered to grant to the prejudiced party equitable compensation.

(c) Having regard to the provisions of the constitution and law of the United States of America, of Brazil, and of Japan, neither the present Article, nor Article 300, nor the Annex hereto shall apply to contracts made between nationals of these States and German nationals; nor shall Article 305 apply to the United States of America or its nationals.

(d) The present Article and the annex hereto shall not apply to contracts the parties to which became enemies by reason of one of them being an inhabitant of territory of which the sovereignty has been transferred, if such party shall acquire under the present Treaty the nationality of an Allied or Associated Power, nor shall they apply to contracts between nationals of the Allied and Associated Powers between whom trading has been prohibited by reason of one of the parties being in Allied or Associated territory in the occupation of the enemy.

(e) Nothing in the present Article or the annex hereto shall be deemed to invalidate a transaction lawfully carried out in accordance with a contract between enemies if it has been carried out with the authority of one of the belligerent Powers.

ARTICLE 300.

(a) All periods of prescription, or limitation of right of action, whether they began to run before or after the outbreak of war, shall be treated in the territory of the High Contracting Parties, so far as regards relations between enemies, as having been suspended for the duration of the war. They shall begin to run again at earliest three months after the coming into force of the present Treaty. This provision shall apply to the period prescribed for the presentation of interest or dividend coupons or for the presentation for repayment of securities drawn for repayment or repayable on any other ground.

(b) Where, on account of failure to perform any act or comply with any formality during the war, measures of execution have been taken in German territory to the prejudice of a national of an Allied or Associated Power, the claim of such national shall, if the matter does not fall within the competence of the Courts of an Allied or Associated Power, be heard by the Mixed Arbitral Tribunal provided for by Section VI.

(c) Upon the application of any interested person who is a national of an Allied or Associated Power the Mixed Arbitral Tribunal shall order the restoration of the rights which have been prejudiced by the measures of execution referred to in paragraph (b), wherever, having regard to the particular circumstances of the case, such restoration is equitable and possible.

If such restoration is inequitable or impossible the Mixed Arbitral Tribunal may grant compensation to the prejudiced party to be paid by the German Government.

(d) Where a contract between enemies has been dissolved by reason either of failure on the part of either party to carry out its provisions or of the exercise of a right stipulated in the contract itself the party prejudiced may apply to the Mixed Arbitral Tribunal for relief. The Tribunal will have the powers provided for in paragraph (c.)

(e) The provisions of the preceding paragraphs of this Article shall apply to the nationals of Allied and Associated Powers who have been prejudiced by reason of measures referred to above taken by Germany in invaded or occupied territory, if they have not been otherwise compensated.

(f) Germany shall compensate any third party who may be prejudiced by any restitution or restoration ordered by the Mixed Arbitral Tribunal under the provisions of the preceding paragraphs of this Article.

(g) As regards negotiable instruments, the period of three months provided under paragraph (a) shall commence as from the date on which any exceptional regulations applied in the territories of the interested Power with regard to negotiable instruments shall have definitely ceased to have force.

ARTICLE 301.

As between enemies no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment or to give notice of non-acceptance or non-payment to

drawers or indorsers or to protest the instrument, nor by reason of failure to complete any formality during the war.

Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or indorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have given notice of non-acceptance or non-payment has failed to do so during the war, a period of not less than three months from the coming into force of the present Treaty shall be allowed within which presentation, notice of non-acceptance or non-payment or protest may be made.

ARTICLE 302.

Judgments given by the Courts of an Allied or Associated Power in all cases which, under the present Treaty, they are competent to decide, shall be recognised in Germany as final, and shall be enforced without it being necessary to have them declared executory.

If a judgment in respect to any dispute which may have arisen has been given during the war by a German Court against a national of an Allied or Associated State in a case in which he was not able to make his defence, the Allied and Associated national who has suffered prejudice thereby shall be entitled to recover compensation, to be fixed by the Mixed Arbitral Tribunal provided for in Section VI.

At the instance of the national of the Allied or Associated Power the compensation above-mentioned may, upon order to that effect of the Mixed Arbitral Tribunal, be effected where it is possible by replacing the parties in the situation which they occupied before the judgment was given by the German Court.

The above compensation may likewise be obtained before the Mixed Arbitral Tribunal by the nationals of Allied or Associated Powers who have suffered prejudice by judicial measures taken in invaded or occupied territories, if they have not been otherwise compensated.

ARTICLE 303.

For the purpose of Sections III, IV, V and VII, the expression "during the war" means for each Allied or Associated Power the period between the commencement of the state of war between that Power and Germany and the coming into force of the present Treaty.

ANNEX.

I. General Provisions.

1.

Within the meaning of Articles 299, 300 and 301, the parties to a contract shall be regarded as enemies when trading between them shall have been prohibited by or otherwise became unlawful under

laws, orders or regulations to which one of those parties was subject. They shall be deemed to have become enemies from the date when such trading was prohibited or otherwise became unlawful.

2.

The following classes of contracts are excepted from dissolution by Article 299 and, without prejudice to the rights contained in Article 297 (b) of Section IV, remain in force subject to the application of domestic laws, orders or regulations made during the war by the Allied and Associated Powers and subject to the terms of the contracts:

(a) Contracts having for their object the transfer of estates or of real or personal property where the property therein had passed or the object had been delivered before the parties became enemies;

(b) Leases and agreements for leases of land and houses;

(c) Contracts of mortgage, pledge or lien;

(d) Concessions concerning mines, quarries or deposits;

(e) Contracts between individuals or companies and States, provinces, municipalities, or other similar juridical persons charged with administrative functions, and concessions granted by States, provinces, municipalities, or other similar juridical persons charged with administrative functions.

3.

If the provisions of a contract are in part dissolved under Article 299, the remaining provisions of that contract shall, subject to the same application of domestic laws as is provided for in paragraph 2, continue in force if they are severable, but where they are not severable the contract shall be deemed to have been dissolved in its entirety.

II. Provisions relating to certain classes of Contracts.

Stock Exchange and Commercial Exchange Contracts.

4.

(a) Rules made during the war by any recognised Exchange or Commercial Association providing for the closure of contracts entered into before the war by an enemy are confirmed by the High Contracting Parties, as also any action taken thereunder, provided:

(1) That the contract was expressed to be made subject to the rules of the Exchange or Association in question;

(2) That the rules applied to all persons concerned;

(3) That the conditions attaching to the closure were fair and reasonable.

(b) The preceding paragraph shall not apply to rules made during the occupation by Exchanges or Commercial Associations in the districts occupied by the enemy.

(c) The closure of contracts relating to cotton "futures", which were closed as on July 31, 1914, under the decision of the Liverpool Cotton Association, is also confirmed.

Security.

5.

The sale of a security held for an unpaid debt owing by an enemy shall be deemed to have been valid irrespective of notice to the owner if the creditor acted in good faith and with reasonable care and prudence, and no claim by the debtor on the ground of such sale shall be admitted.

This stipulation shall not apply to any sale of securities effected by an enemy during the occupation in regions invaded or occupied by the enemy.

Negotiable Instruments.

6.

As regards Powers which adopt Section III and the Annex thereto the pecuniary obligations existing between enemies and resulting from the issue of negotiable instruments shall be adjusted in conformity with the said Annex by the instrumentality of the Clearing Offices, which shall assume the rights of the holder as regards the various remedies open to him.

7.

If a person has either before or during the war become liable upon a negotiable instrument in accordance with an undertaking given to him by a person who has subsequently become an enemy, the latter shall remain liable to indemnify the former in respect of his liability notwithstanding the outbreak of war.

III. Contracts of Insurance.

8.

Contracts of insurance entered into by any person with another person who subsequently became an enemy will be dealt with in accordance with the following paragraphs.

Fire Insurance.

9.

Contracts for the insurance of property against fire entered into by a person interested in such property with another person who subsequently became an enemy shall not be deemed to have been dissolved by the outbreak of war, or by the fact of the person becoming an enemy, or on account of the failure during the war and for a period of three months thereafter to perform his obligations under the contract, but they shall be dissolved at the date when the annual premium becomes payable for the first time after the expiration of a period of three months after the coming into force of the present Treaty.

A settlement shall be effected of unpaid premiums which became due during the war, or of claims for losses which occurred during the war.

10.

Where by administrative or legislative action an insurance against fire effected before the war has been transferred during the war from the original to another insurer, the transfer will be recognised and the liability of the original insurer will be deemed to have ceased as from the date of the transfer. The original insurer will, however, be entitled to receive on demand full information as to the terms of the transfer, and if it should appear that these terms were not equitable they shall be amended so far as may be necessary to render them equitable.

Furthermore, the insured shall, subject to the concurrence of the original insurer, be entitled to retransfer the contract to the original insurer as from the date of the demand.

Life Insurance.

11.

Contracts of life insurance entered into between an insurer and a person who subsequently became an enemy shall not be deemed to have been dissolved by the outbreak of war, or by the fact of the person becoming an enemy.

Any sum which during the war became due upon a contract deemed not to have been dissolved under the preceding provision shall be recoverable after the war with the addition of interest at five per cent. per annum from the date of its becoming due up to the day of payment.

Where the contract has lapsed during the war owing to non-payment of premiums, or has become void from breach of the conditions of the contract, the assured or his representatives or the person entitled shall have the right at any time within twelve months of the coming into force of the present Treaty to claim from the insurer the surrender value of the policy at the date of its lapse or avoidance.

Where the contract has lapsed during the war owing to non-payment of premiums the payment of which has been prevented by the enforcement of measures of war, the assured or his representative or the persons entitled shall have the right to restore the contract on payment of the premiums with interest at five per cent. per annum within three months from the coming into force of the present Treaty.

12.

Any Allied or Associated Power may within three months of the coming into force of the present Treaty cancel all the contracts of insurance running between a German insurance company and its nationals under conditions which shall protect its nationals from any prejudice.

To this end the German insurance company will hand over to the Allied or Associated Government concerned the proportion of its

assets attributable to the policies so cancelled and will be relieved from all liability in respect of such policies. The assets to be handed over shall be determined by an actuary appointed by the Mixed Arbitral Tribunal.

13.

Where contracts of life insurance have been entered into by a local branch of an insurance company established in a country which subsequently became an enemy country, the contract shall, in the absence of any stipulation to the contrary in the contract itself, be governed by the local law, but the insurer shall be entitled to demand from the insured or his representatives the refund of sums paid on claims made or enforced under measures taken during the war, if the making or enforcement of such claims was not in accordance with the terms of the contract itself or was not consistent with the laws or treaties existing at the time when it was entered into.

14.

In any case where by the law applicable to the contract the insurer remains bound by the contract notwithstanding the non-payment of premiums until notice is given to the insured of the termination of the contract, he shall be entitled where the giving of such notice was prevented by the war to recover the unpaid premiums with interest at five per cent. per annum from the insured.

15.

Insurance contracts shall be considered as contracts of life assurance for the purpose of paragraphs 11 to 14 when they depend on the probabilities of human life combined with the rate of interest for the calculation of the reciprocal engagements between the two parties.

Marine Insurance.

16.

Contracts of marine insurance including time policies and voyage policies entered into between an insurer and a person who subsequently became an enemy, shall be deemed to have been dissolved on his becoming an enemy, except in cases where the risk undertaken in the contract had attached before he became an enemy.

Where the risk had not attached, money paid by way of premium or otherwise shall be recoverable from the insurer.

Where the risk had attached effect shall be given to the contract notwithstanding the party becoming an enemy, and sums due under the contract either by way of premiums or in respect of losses shall be recoverable after the coming into force of the present Treaty.

In the event of any agreement being come to for the payment of interest on sums due before the war to or by the nationals of States which have been at war and recovered after the war, such interest shall in the case of losses recoverable under contracts of marine insurance run from the expiration of a period of one year from the date of the loss.

No contract of marine insurance with an insured person who subsequently became an enemy shall be deemed to cover losses due to belligerent action by the Power of which the insurer was a national or by the allies or associates of such Power.

Where it is shown that a person who had before the war entered into a contract of marine insurance with an insurer who subsequently became an enemy entered after the outbreak of war into a new contract covering the same risk with an insurer who was not an enemy, the new contract shall be deemed to be substituted for the original contract as from the date when it was entered into, and the premiums payable shall be adjusted on the basis of the original insurer having remained liable on the contract only up till the time when the new contract was entered into.

Other Insurances.

Contracts of insurance entered into before the war between an insurer and a person who subsequently became an enemy, other than contracts dealt with in paragraphs 9 to 18, shall be treated in all respects on the same footing as contracts of fire insurance between the same persons would be dealt with under the said paragraphs.

Re-insurance.

All treaties of re-insurance with a person who became an enemy shall be regarded as having been abrogated by the person becoming an enemy, but without prejudice in the case of life or marine risks which had attached before the war to the right to recover payment after the war for sums due in respect of such risks.

Nevertheless if, owing to invasion, it has been impossible for the re-insured to find another re-insurer, the treaty shall remain in force until three months after the coming into force of the present Treaty.

Where a re-insurance treaty becomes void under this paragraph, there shall be an adjustment of accounts between the parties in respect both of premiums paid and payable and of liabilities for losses in respect of life or marine risks which had attached before the war. In the case of risks other than those mentioned in paragraphs 11 to 18 the adjustment of accounts shall be made as at the date of the parties becoming enemies without regard to claims for losses which may have occurred since that date.

The provisions of the preceding paragraph will extend equally to re-insurances existing at the date of the parties becoming enemies

of particular risks undertaken by the insurer in a contract of insurance against any risks other than life or marine risks.

22.

Re-insurance of life risks effected by particular contracts and not under any general treaty remain in force.

The provisions of paragraph 12 apply to treaties of re-insurance of life insurance contracts in which enemy companies are the re-insurers.

23.

In case of a re-insurance effected before the war of a contract of marine insurance, the cession of a risk which had been ceded to the re-insurer shall, if it had attached before the outbreak of war, remain valid and effect be given to the contract notwithstanding the outbreak of war; sums due under the contract of re-insurance in respect either of premiums or of losses shall be recoverable after the war.

24.

The provisions of paragraphs 17 and 18 and the last part of paragraph 16 shall apply to contracts for the re-insurance of marine risks.

SECTION VI.

MIXED ARBITRAL TRIBUNAL.

ARTICLE 304.

(a) Within three months from the date of the coming into force of the present Treaty, a Mixed Arbitral Tribunal shall be established between each of the Allied and Associated Powers on the one hand and Germany on the other hand. Each such Tribunal shall consist of three members. Each of the Governments concerned shall appoint one of these members. The President shall be chosen by agreement between the two Governments concerned.

In case of failure to reach agreement, the President of the Tribunal and two other persons either of whom may in case of need take his place, shall be chosen by the Council of the League of Nations, or, until this is set up, by M. Gustave Ador if he is willing. These persons shall be nationals of Powers that have remained neutral during the war.

If any Government does not proceed within a period of one month in case there is a vacancy to appoint a member of the Tribunal, such member shall be chosen by the other Government from the two persons mentioned above other than the President.

The decision of the majority of the members of the Tribunal shall be the decision of the Tribunal.

(b) The Mixed Arbitral Tribunals established pursuant to paragraph (a), shall decide all questions within their competence under Sections III, IV, V and VII.

In addition, all questions, whatsoever their nature, relating to contracts concluded before the coming into force of the present Treaty between nationals of the Allied and Associated Powers and German nationals shall be decided by the Mixed Arbitral Tribunal, always excepting questions which, under the laws of the Allied, Associated or Neutral Powers, are within the jurisdiction of the National Courts of those Powers. Such questions shall be decided by the National Courts in question, to the exclusion of the Mixed Arbitral Tribunal. The party who is a national of an Allied or Associated Power may nevertheless bring the case before the Mixed Arbitral Tribunal if this is not prohibited by the laws of his country.

(c) If the number of cases justifies it, additional members shall be appointed and each Mixed Arbitral Tribunal shall sit in divisions. Each of these divisions will be constituted as above.

(d) Each Mixed Arbitral Tribunal will settle its own procedure except in so far as it is provided in the following Annex, and is empowered to award the sums to be paid by the loser in respect of the costs and expenses of the proceedings.

(e) Each Government will pay the remuneration of the member of the Mixed Arbitral Tribunal appointed by it and of any agent whom it may appoint to represent it before the Tribunal. The remuneration of the President will be determined by special agreement between the Governments concerned; and this remuneration and the joint expenses of each Tribunal will be paid by the two Governments in equal moieties.

(f) The High Contracting Parties agree that their courts and authorities shall render to the Mixed Arbitral Tribunals direct all the assistance in their power, particularly as regards transmitting notices and collecting evidence.

(g) The High Contracting Parties agree to regard the decisions of the Mixed Arbitral Tribunal as final and conclusive, and to render them binding upon their nationals.

ANNEX.

1.

Should one of the members of the Tribunal either die, retire, or be unable for any reason whatever to discharge his function, the same procedure will be followed for filling the vacancy as was followed for appointing him.

2.

The Tribunal may adopt such rules of procedure as shall be in accordance with justice and equity and decide the order and time at which each party must conclude its arguments, and may arrange all formalities required for dealing with the evidence.

3.

The agent and counsel of the parties on each side are authorized to present orally and in writing to the Tribunal arguments in support or in defence of each case.

4.

The Tribunal shall keep record of the questions and cases submitted and the proceedings thereon, with the dates of such proceedings.

5.

Each of the Powers concerned may appoint a secretary. These secretaries shall act together as joint secretaries of the Tribunal and shall be subject to its direction. The Tribunal may appoint and employ any other necessary officer or officers to assist in the performance of its duties.

6.

The Tribunal shall decide all questions and matters submitted upon such evidence and information as may be furnished by the parties concerned.

7.

Germany agrees to give the Tribunal all facilities and information required by it for carrying out its investigations.

8.

The language in which the proceedings shall be conducted shall, unless otherwise agreed, be English, French, Italian or Japanese, as may be determined by the Allied or Associated Power concerned.

9.

The place and time for the meetings of each Tribunal shall be determined by the President of the Tribunal.

ARTICLE 305.

Whenever a competent court has given or gives a decision in a case covered by Sections III, IV, V or VII, and such decision is inconsistent with the provisions of such Sections, the party who is prejudiced by the decision shall be entitled to obtain redress which shall be fixed by the Mixed Arbitral Tribunal. At the request of the national of an Allied or Associated Power, the redress may, whenever possible, be effected by the Mixed Arbitral Tribunal directing the replacement of the parties in the position occupied by them before the judgment was given by the German court.

SECTION VII.

INDUSTRIAL PROPERTY.

ARTICLE 306.

Subject to the stipulations of the present Treaty, rights of industrial, literary and artistic property, as such property is defined

by the International Conventions of Paris and of Berne, mentioned in Article 286, shall be re-established or restored, as from the coming into force of the present Treaty, in the territories of the High Contracting Parties, in favour of the persons entitled to the benefit of them at the moment when the state of war commenced or their legal representatives. Equally, rights which, except for the war, would have been acquired during the war in consequence of an application made for the protection of industrial property, or the publication of a literary or artistic work, shall be recognised and established in favour of those persons who would have been entitled thereto, from the coming into force of the present Treaty.

Nevertheless, all acts done by virtue of the special measures taken during the war under legislative, executive or administrative authority of any Allied or Associated Power in regard to the rights of German nationals in industrial, literary or artistic property shall remain in force and shall continue to maintain their full effect.

No claim shall be made or action brought by Germany or German nationals in respect of the use during the war by the Government of any Allied or Associated Power, or by any persons acting on behalf or with the assent of such Government, of any rights in industrial, literary or artistic property, nor in respect of the sale, offering for sale, or use of any products, articles or apparatus whatsoever to which such rights applied.

Unless the legislation of any one of the Allied or Associated Powers in force at the moment of the signature of the present Treaty otherwise directs, sums due or paid in virtue of any act or operation resulting from the execution of the special measures mentioned in paragraph I of this Article shall be dealt with in the same way as other sums due to German nationals are directed to be dealt with by the present Treaty; and sums produced by any special measures taken by the German Government in respect of rights in industrial, literary or artistic property belonging to the nationals of the Allied or Associated Powers shall be considered and treated in the same way as other debts due from German nationals.

Each of the Allied and Associated Powers reserves to itself the right to impose such limitations, conditions or restrictions on rights of industrial, literary or artistic property (with the exception of trade-marks) acquired before or during the war, or which may be subsequently acquired in accordance with its legislation, by German nationals, whether by granting licences, or by the working, or by preserving control over their exploitation, or in any other way, as may be considered necessary for national defence, or in the public interest, or for assuring the fair treatment by Germany of the rights of industrial, literary and artistic property held in German territory by its nationals, or for securing the due fulfilment of all the obligations undertaken by Germany in the present Treaty. As regards rights of industrial, literary and artistic property acquired after the coming into force of the present Treaty, the right so reserved by the Allied and Associated Powers shall only be exercised in cases where these limitations, conditions or restrictions may be considered necessary for national defence or in the public interest.

In the event of the application of the provisions of the preceding paragraph by any Allied or Associated Power, there shall be paid

reasonable indemnities or royalties, which shall be dealt with in the same way as other sums due to German nationals are directed to be dealt with by the present Treaty.

Each of the Allied or Associated Powers reserves the right to treat as void and of no effect any transfer in whole or in part of or other dealing with rights of or in respect of industrial, literary or artistic property effected after August 1, 1914, or in the future, which would have the result of defeating the objects of the provisions of this Article.

The provisions of this Article shall not apply to rights in industrial, literary or artistic property which have been dealt with in the liquidation of businesses or companies under war legislation by the Allied or Associated Powers, or which may be so dealt with by virtue of Article 297, paragraph (b).

ARTICLE 307.

A minimum of one year after the coming into force of the present Treaty shall be accorded to the nationals of the High Contracting Parties, without extension fees or other penalty, in order to enable such persons to accomplish any act, fulfil any formality, pay any fees, and generally satisfy any obligation prescribed by the laws or regulations of the respective States relating to the obtaining, preserving, or opposing rights to, or in respect of, industrial property either acquired before August 1, 1914, or which, except for the war, might have been acquired since that date as a result of an application made before the war or during its continuance, but nothing in this Article shall give any right to reopen interference proceedings in the United States of America where a final hearing has taken place.

All rights in, or in respect of, such property which may have lapsed by reason of any failure to accomplish any act, fulfil any formality, or make any payment, shall revive, but subject in the case of patents and designs to the imposition of such conditions as each Allied or Associated Power may deem reasonably necessary for the protection of persons who have manufactured or made use of the subject matter of such property while the rights had lapsed. Further, where rights to patents or designs belonging to German nationals are revived under this Article, they shall be subject in respect of the grant of licences to the same provisions as would have been applicable to them during the war, as well as to all the provisions of the present Treaty.

The period from August 1, 1914, until the coming into force of the present Treaty shall be excluded in considering the time within which a patent should be worked or a trade mark or design used, and it is further agreed that no patent, registered trade mark or design in force on August 1, 1914, shall be subject to revocation or cancellation by reason only of the failure to work such patent or use such trade mark or design for two years after the coming into force of the present Treaty.

ARTICLE 308.

The rights of priority, provided by Article 4 of the International Convention for the Protection of Industrial Property of Paris, of

March 20, 1883, revised at Washington in 1911 or by any other Convention or Statute, for the filing or registration of applications for patents or models of utility, and for the registration of trade marks, designs and models which had not expired on August 1, 1914, and those which have arisen during the war, or would have arisen but for the war, shall be extended by each of the High Contracting Parties in favour of all nationals of the other High Contracting Parties for a period of six months after the coming into force of the present Treaty.

Nevertheless, such extension shall in no way affect the right of any of the High Contracting Parties or of any person who before the coming into force of the present Treaty was *bonâ fide* in possession of any rights of industrial property conflicting with rights applied for by another who claims rights of priority in respect of them, to exercise such rights by itself or himself personally, or by such agents or licensees as derived their rights from it or him before the coming into force of the present Treaty; and such persons shall not be amenable to any action or other process of law in respect of infringement.

ARTICLE 309.

No action shall be brought and no claim made by persons residing or carrying on business within the territories of Germany on the one part and of the Allied or Associated Powers on the other, or persons who are nationals of such Powers respectively, or by any one deriving title during the war from such persons, by reason of any action which has taken place within the territory of the other party between the date of the declaration of war and that of the coming into force of the present Treaty, which might constitute an infringement of the rights of industrial property or rights of literary and artistic property, either existing at any time during the war or revived under the provisions of Articles 307 and 308.

Equally, no action for infringement of industrial, literary or artistic property rights by such persons shall at any time be permissible in respect of the sale or offering for sale for a period of one year after the signature of the present Treaty in the territories of the Allied or Associated Powers on the one hand or Germany on the other, of products or articles manufactured, or of literary or artistic works published, during the period between the declaration of war and the signature of the present Treaty, or against those who have acquired and continue to use them. It is understood, nevertheless, that this provision shall not apply when the possessor of the rights was domiciled or had an industrial or commercial establishment in the districts occupied by Germany during the war.

This Article shall not apply as between the United States of America on the one hand and Germany on the other.

ARTICLE 310.

Licences in respect of industrial, literary or artistic property concluded before the war between nationals of the Allied or Associated Powers or persons residing in their territory or carrying on business therein, on the one part, and German nationals, on the other part, shall be considered as cancelled as from the date of the dec-

laration of war between Germany and the Allied or Associated Power. But, in any case, the former beneficiary of a contract of this kind shall have the right, within a period of six months after the coming into force of the present Treaty, to demand from the proprietor of the rights the grant of a new licence, the conditions of which, in default of agreement between the parties, shall be fixed by the duly qualified tribunal in the country under whose legislation the rights had been acquired, except in the case of licences held in respect of rights acquired under German law. In such cases the conditions shall be fixed by the Mixed Arbitral Tribunal referred to in Section VI of this Part. The tribunal may, if necessary, fix also the amount which it may deem just should be paid by reason of the use of the rights during the war.

No licence in respect of industrial, literary or artistic property, granted under the special war legislation of any Allied or Associated Power, shall be affected by the continued existence of any licence entered into before the war, but shall remain valid and of full effect, and a licence so granted to the former beneficiary of a licence entered into before the war shall be considered as substituted for such licence.

Where sums have been paid during the war by virtue of a licence or agreement concluded before the war in respect of rights of industrial property or for the reproduction or the representation of literary, dramatic or artistic works, these sums shall be dealt with in the same manner as other debts or credits of German nationals, as provided by the present Treaty.

This Article shall not apply as between the United States of America on the one hand and Germany on the other.

ARTICLE 311.

The inhabitants of territories separated from Germany by virtue of the present Treaty shall, notwithstanding this separation and the change of nationality consequent thereon, continue to enjoy in Germany all the rights in industrial, literary and artistic property to which they were entitled under German legislation at the time of the separation.

Rights of industrial, literary and artistic property which are in force in the territories separated from Germany under the present Treaty at the moment of the separation of these territories from Germany, or which will be re-established or restored in accordance with the provisions of Article 306 of the present Treaty, shall be recognized by the State to which the said territory is transferred and shall remain in force in that territory for the same period of time given them under the German law.

SECTION VIII.

SOCIAL AND STATE INSURANCE IN CEDED TERRITORY.

ARTICLE 312.

Without prejudice to the provisions contained in other Articles of the present Treaty, the German Government undertakes to transfer

to any Power to which German territory in Europe is ceded, and to any Power administering former German territory as a mandatory under Article 22 of Part I (League of Nations), such portion of the reserves accumulated by the Government of the German Empire or of German States, or by public or private organisations under their control, as is attributable to the carrying on of Social or State Insurance in such territory.

The Powers to which these funds are transferred must apply them to the performance of the obligations arising from such insurances.

The conditions of the transfer will be determined by special conventions to be concluded between the German Government and the Governments concerned.

In case these special conventions are not concluded in accordance with the above paragraph within three months after the coming into force of the present Treaty, the conditions of transfer shall in each case be referred to a Commission of five members, one of whom shall be appointed by the German Government, one by the other interested Government and three by the Governing Body of the International Labour Office from the nationals of other States. This Commission shall by majority vote within three months after appointment adopt recommendations for submission to the Council of the League of Nations, and the decisions of the Council shall forthwith be accepted as final by Germany and the other Government concerned.

PART XI.

AERIAL NAVIGATION.

ARTICLE 313.

The aircraft of the Allied and Associated Powers shall have full liberty of passage and landing over and in the territory and territorial waters of Germany, and shall enjoy the same privileges as German aircraft, particularly in case of distress by land or sea.

ARTICLE 314.

The aircraft of the Allied and Associated Powers shall, while in transit to any foreign country whatever, enjoy the right of flying over the territory and territorial waters of Germany without landing, subject always to any regulations which may be made by Germany, and which shall be applicable equally to the aircraft of Germany and to those of the Allied and Associated countries.

ARTICLE 315.

All aerodromes in Germany open to national public traffic shall be open for the aircraft of the Allied and Associated Powers, and in any such aerodrome such aircraft shall be treated on a footing of equality with German aircraft as regards charges of every description, including charges for landing and accommodation.

ARTICLE 316.

Subject to the present provisions, the rights of passage, transit and landing, provided for in Articles 313, 314 and 315, are subject to the observance of such regulations as Germany may consider it necessary to enact, but such regulations shall be applied without distinction to German aircraft and to those of the Allied and Associated countries.

ARTICLE 317.

Certificates of nationality, airworthiness, or competency, and licences, issued or recognised as valid by any of the Allied or Associated Powers, shall be recognised in Germany as valid and as equivalent to the certificates and licences issued by Germany.

ARTICLE 318.

As regards internal commercial air traffic, the aircraft of the Allied and Associated Powers shall enjoy in Germany most favoured nation treatment.

ARTICLE 319.

Germany undertakes to enforce the necessary measures to ensure that all German aircraft flying over her territory shall comply with the Rules as to lights and signals, Rules of the Air and Rules for Air Traffic on and in the neighbourhood of aerodromes, which have been laid down in the Convention relative to Aerial Navigation concluded between the Allied and Associated Powers.

ARTICLE 320.

The obligations imposed by the preceding provisions shall remain in force until January 1, 1923, unless before that date Germany shall have been admitted into the League of Nations or shall have been authorised, by consent of the Allied and Associated Powers, to adhere to the Convention relative to Aerial Navigation concluded between those Powers.

PART XII.**PORTS, WATERWAYS AND RAILWAYS.****SECTION I.****GENERAL PROVISIONS.****ARTICLE 321.**

Germany undertakes to grant freedom of transit through her territories on the routes most convenient for international transit, either by rail, navigable waterway, or canal, to persons, goods, vessels, carriages, wagons and mails coming from or going to the territories of any of the Allied and Associated Powers (whether contiguous

ous or not); for this purpose the crossing of territorial waters shall be allowed. Such persons, goods, vessels, carriages, wagons and mails shall not be subjected to any transit duty or to any undue delays or restrictions, and shall be entitled in Germany to national treatment as regards charges, facilities, and all other matters.

Goods in transit shall be exempt from all Customs or other similar duties.

All charges imposed on transport in transit shall be reasonable, having regard to the conditions of the traffic. No charge, facility or restriction shall depend directly or indirectly on the ownership or on the nationality of the ship or other means of transport on which any part of the through journey has been, or is to be, accomplished.

ARTICLE 322.

Germany undertakes neither to impose nor to maintain any control over transmigration traffic through her territories beyond measures necessary to ensure that passengers are *bonâ fide* in transit; nor to allow any shipping company or any other private body, corporation or person interested in the traffic to take any part whatever in, or to exercise any direct or indirect influence over, any administrative service that may be necessary for this purpose.

ARTICLE 323.

Germany undertakes to make no discrimination or preference, direct or indirect, in the duties, charges and prohibitions relating to importations into or exportations from her territories, or, subject to the special engagements contained in the present Treaty, in the charges and conditions of transport of goods or persons entering or leaving her territories, based on the frontier crossed; or on the kind, ownership or flag of the means of transport (including aircraft) employed; or on the original or immediate place of departure of the vessel, wagon or aircraft or other means of transport employed, or its ultimate or intermediate destination; or on the route of or places of trans-shipment on the journey; or on whether any port through which the goods are imported or exported is a German port or a port belonging to any foreign country or on whether the goods are imported or exported by sea, by land or by air.

Germany particularly undertakes not to establish against the ports and vessels of any of the Allied and Associated Powers any surtax or any direct or indirect bounty for export or import by German ports or vessels, or by those of another Power, for example by means of combined tariffs. She further undertakes that persons or goods passing through a port or using a vessel of any of the Allied and Associated Powers shall not be subjected to any formality or delay whatever to which such persons or goods would not be subjected if they passed through a German port or a port of any other Power, or used a German vessel or a vessel of any other Power.

ARTICLE 324.

All necessary administrative and technical measures shall be taken to shorten, as much as possible, the transmission of goods across the

German frontiers and to ensure their forwarding and transport from such frontiers, irrespective of whether such goods are coming from or going to the territories of the Allied and Associated Powers or are in transit from or to those territories, under the same material conditions in such matters as rapidity of carriage and care *en route* as are enjoyed by other goods of the same kind carried on German territory under similar conditions of transport.

In particular, the transport of perishable goods shall be promptly and regularly carried out, and the customs formalities shall be effected in such a way as to allow the goods to be carried straight through by trains which make connection.

ARTICLE 325.

The seaports of the Allied and Associated Powers are entitled to all favours and to all reduced tariffs granted on German railways or navigable waterways for the benefit of German ports or of any port of another Power.

ARTICLE 326.

Germany may not refuse to participate in the tariffs or combinations of tariffs intended to secure for ports of any of the Allied and Associated Powers advantages similar to those granted by Germany to her own ports or the ports of any other Power.

SECTION II.

NAVIGATION.

CHAPTER I.

FREEDOM OF NAVIGATION.

ARTICLE 327.

The nationals of any of the Allied and Associated Powers as well as their vessels and property shall enjoy in all German ports and on the inland navigation routes of Germany the same treatment in all respects as German nationals, vessels and property.

In particular the vessels of any one of the Allied or Associated Powers shall be entitled to transport goods of any description, and passengers, to or from any ports or places in German territory to which German vessels may have access, under conditions which shall not be more onerous than those applied in the case of national vessels; they shall be treated on a footing of equality with national vessels as regards port and harbour facilities and charges of every description, including facilities for stationing, loading and unloading, and duties and charges of tonnage, harbour, pilotage, light-house, quarantine, and all analogous duties and charges of whatsoever nature, levied in the name of or for the profit of the Govern-

ment, public functionaries, private individuals, corporations or establishments of any kind.

In the event of Germany granting a preferential régime to any of the Allied or Associated Powers or to any other foreign Power, this régime shall be extended immediately and unconditionally to all the Allied and Associated Powers.

There shall be no impediment to the movement of persons or vessels other than those arising from prescriptions concerning customs, police, sanitation, emigration and immigration, and those relating to the import and export of prohibited goods. Such regulations must be reasonable and uniform and must not impede traffic unnecessarily.

CHAPTER II.

FREE ZONES IN PORTS.

ARTICLE 328.

The free zones existing in German ports on August 1, 1914, shall be maintained. These free zones, and any other free zones which may be established in German territory by the present Treaty, shall be subject to the régime provided for in the following Articles.

Goods entering or leaving a free zone shall not be subjected to any import or export duty, other than those provided for in Article 330.

Vessels and goods entering a free zone may be subjected to the charges established to cover expenses of administration, upkeep and improvement of the port, as well as to the charges for the use of various installations, provided that these charges shall be reasonable having regard to the expenditure incurred, and shall be levied in the conditions of equality provided for in Article 327.

Goods shall not be subjected to any other charge except a statistical duty which shall not exceed 1 per mille *ad valorem*, and which shall be devoted exclusively to defraying the expenses of compiling statements of the traffic in the port.

ARTICLE 329.

The facilities granted for the erection of warehouses, for packing and for unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from duty, whether of excise or of any other description, apart from the statistical duty provided for in Article 328 above.

There shall be no discrimination in regard to any of the provisions of the present Article between persons belonging to different nationalities or between goods of different origin or destination.

ARTICLE 330.

Import duties may be levied on goods leaving the free zone for consumption in the country on the territory of which the port is situated. Conversely, export duties may be levied on goods com-

ing from such country and brought into the free zone. These import and export duties shall be levied on the same basis and at the same rates as similar duties levied at the other Customs frontiers of the country concerned. On the other hand, Germany shall not levy, under any denomination, any import, export or transit duty on goods carried by land or water across her territory to or from the free zone from or to any other State.

Germany shall draw up the necessary regulations to secure and guarantee such freedom of transit over such railways and waterways in her territory as normally give access to the free zone.

CHAPTER III.

CLAUSES RELATING TO THE ELBE, THE ODER, THE NIEMEN (RUSSSTROM-MEMEL-NIEMEN) AND THE DANUBE.

(1)—General Clauses.

ARTICLE 331.

The following rivers are declared international:
 the Elbe (*Labe*) from its confluence with the Vltava (*Moldau*), and the Vltava (*Moldau*) from Prague;
 the Oder (*Odra*) from its confluence with the Oppa;
 the Niemen (*Russstrom-Memel-Niemen*) from Grodno;
 the Danube from Ulm;
 and all navigable parts of these river systems which naturally provide more than one State with access to the sea, with or without transshipment from one vessel to another; together with lateral canals and channels constructed either to duplicate or to improve naturally navigable sections of the specified river systems, or to connect two naturally navigable sections of the same river.

The same shall apply to the Rhine-Danube navigable waterway, should such a waterway be constructed under the conditions laid down in Article 353.

ARTICLE 332.

On the waterways declared to be international in the preceding Article, the nationals, property and flags of all Powers shall be treated on a footing of perfect equality, no distinction being made to the detriment of the nationals, property or flag of any Power between them and the nationals, property or flag of the riparian State itself or of the most favoured nation.

Nevertheless, German vessels shall not be entitled to carry passengers or goods by regular services between the ports of any Allied or Associated Power, without special authority from such Power.

ARTICLE 333.

Where such charges are not precluded by any existing conventions, charges varying on different sections of a river may be levied

on vessels using the navigable channels or their approaches, provided that they are intended solely to cover equitably the cost of maintaining in a navigable condition, or of improving, the river and its approaches, or to meet expenditure incurred in the interests of navigation. The schedule of such charges shall be calculated on the basis of such expenditure and shall be posted up in the ports. These charges shall be levied in such a manner as to render any detailed examination of cargoes unnecessary, except in cases of suspected fraud or contravention.

ARTICLE 334.

The transit of vessels, passengers and goods on these waterways shall be effected in accordance with the general conditions prescribed for transit in Section I above.

When the two banks of an international river are within the same State goods in transit may be placed under seal or in the custody of customs agents. When the river forms a frontier goods and passengers in transit shall be exempt from all customs formalities; the loading and unloading of goods, and the embarkation and disembarkation of passengers, shall only take place in the ports specified by the riparian State.

ARTICLE 335.

No dues of any kind other than those provided for in the present Part shall be levied along the course or at the mouth of these rivers.

This provision shall not prevent the fixing by the riparian States of customs, local octroi or consumption duties, or the creation of reasonable and uniform charges levied in the ports, in accordance with public tariffs, for the use of cranes, elevators, quays, warehouses, etc.

ARTICLE 336.

In default of any special organisation for carrying out the works connected with the upkeep and improvement of the international portion of a navigable system, each riparian State shall be bound to take suitable measures to remove any obstacle or danger to navigation and to ensure the maintenance of good conditions of navigation.

If a State neglects to comply with this obligation any riparian State, or any State represented on the International Commission, if there is one, may appeal to the tribunal instituted for this purpose by the League of Nations.

ARTICLE 337.

The same procedure shall be followed in the case of a riparian State undertaking any works of a nature to impede navigation in the international section. The tribunal mentioned in the preceding Article shall be entitled to enforce the suspension or suppression of such works, making due allowance in its decisions for all rights in connection with irrigation, water-power, fisheries, and other national

interests, which, with the consent of all the riparian States or of all the States represented on the International Commission, if there is one, shall be given priority over the requirements of navigation.

Appeal to the tribunal of the League of Nations does not require the suspension of the works.

ARTICLE 338.

The régime set out in Articles 332 to 337 above shall be superseded by one to be laid down in a General Convention drawn up by the Allied and Associated Powers, and approved by the League of Nations, relating to the waterways recognised in such Convention as having an international character. This Convention shall apply in particular to the whole or part of the above-mentioned river systems of the Elbe (*Labe*), the Oder (*Odra*), the Niemen (*Russstrom-Memel-Niemen*), and the Danube, and such other parts of these river systems as may be covered by a general definition.

Germany undertakes, in accordance with the provisions of Article 379, to adhere to the said General Convention as well as to all projects prepared in accordance with Article 343 below for the revision of existing international agreements and regulations.

ARTICLE 339.

Germany shall cede to the Allied and Associated Powers concerned, within a maximum period of three months from the date on which notification shall be given her, a proportion of the tugs and vessels remaining registered in the ports of the river systems referred to in Article 331 after the deduction of those surrendered by way of restitution or reparation. Germany shall in the same way cede material of all kinds necessary to the Allied and Associated Powers concerned for the utilisation of those river systems.

The number of the tugs and boats, and the amount of the material so ceded, and their distribution, shall be determined by an arbitrator or arbitrators nominated by the United States of America, due regard being had to the legitimate needs of the parties concerned, and particularly to the shipping traffic during the five years preceding the war.

All craft so ceded shall be provided with their fittings and gear, shall be in a good state of repair and in condition to carry goods, and shall be selected from among those most recently built.

The cessions provided for in the present Article shall entail a credit of which the total amount, settled in a lump sum by the arbitrator or arbitrators, shall not in any case exceed the value of the capital expended in the initial establishment of the material ceded, and shall be set off against the total sums due from Germany; in consequence, the indemnification of the proprietors shall be a matter for Germany to deal with.

(2) *Special Clauses relating to the Elbe, the Oder and the Niemen (Russstrom-Memel-Niemen).*

ARTICLE 340.

The Elbe (*Labe*) shall be placed under the administration of an International Commission which shall comprise:

- 4 representatives of the German States bordering on the river;
- 2 representatives of the Czecho-Slovak State;
- 1 representative of Great Britain;
- 1 representative of France;
- 1 representative of Italy;
- 1 representative of Belgium.

Whatever be the number of members present, each delegation shall have the right to record a number of votes equal to the number of representatives allotted to it.

If certain of these representatives cannot be appointed at the time of the coming into force of the present Treaty, the decisions of the Commission shall nevertheless be valid.

ARTICLE 341.

The Oder (*Odra*) shall be placed under the administration of an International Commission, which shall comprise:

- 1 representative of Poland;
- 3 representatives of Prussia;
- 1 representative of the Czecho-Slovak State;
- 1 representative of Great Britain;
- 1 representative of France;
- 1 representative of Denmark;
- 1 representative of Sweden.

If certain of these representatives cannot be appointed at the time of the coming into force of the present Treaty, the decisions of the Commission shall nevertheless be valid.

ARTICLE 342.

On a request being made to the League of Nations by any riparian State, the Niemen (*Russstrom-Memel-Niemen*) shall be placed under the administration of an International Commission, which shall comprise one representative of each riparian State, and three representatives of other States specified by the League of Nations.

ARTICLE 343.

The International Commissions referred to in Articles 340 and 341 shall meet within three months of the date of the coming into force of the present Treaty. The International Commission referred to in Article 342 shall meet within three months from the date of the request made by a riparian State. Each of these Commissions shall proceed immediately to prepare a project for the revision of the existing international agreements and regulations, drawn up in conformity with the General Convention referred to in Article 338, should such Convention have been already concluded. In the absence of such Convention, the project for revision shall be in conformity with the principles of Articles 332 to 337 above.

ARTICLE 344.

The projects referred to in the preceding Article shall, *inter alia*:

- (a) designate the headquarters of the International Commission, and prescribe the manner in which its President is to be nominated;
- (b) specify the extent of the Commission's powers, particularly in regard to the execution of works of maintenance, control, and improvement on the river system, the financial régime, the fixing and collection of charges, and regulations for navigation;
- (c) define the sections of the river or its tributaries to which the international régime shall be applied.

ARTICLE 345.

The international agreements and regulations at present governing the navigation of the Elbe (*Labe*), the Oder (*Odra*), and the Niemen (*Russström-Memel-Niemen*) shall be provisionally maintained in force until the ratification of the above-mentioned projects. Nevertheless, in all cases where such agreements and regulations in force are in conflict with the provisions of Articles 332 to 337 above, or of the General Convention to be concluded, the latter provisions shall prevail.

(3) *Special Clauses relating to the Danube.*

ARTICLE 346.

The European Commission of the Danube reassume the powers it possessed before the war. Nevertheless, as a provisional measure, only representatives of Great Britain, France, Italy and Roumania shall constitute this Commission.

ARTICLE 347.

From the point where the competence of the European Commission ceases, the Danube system referred to in Article 331 shall be placed under the administration of an International Commission composed as follows:

- 2 representatives of German riparian States;
- 1 representative of each other riparian State;
- 1 representative of each non-riparian State represented in the future on the European Commission of the Danube.

If certain of these representatives cannot be appointed at the time of the coming into force of the present Treaty, the decisions of the Commission shall nevertheless be valid.

ARTICLE 348.

The International Commission provided for in the preceding Article shall meet as soon as possible after the coming into force of the present Treaty, and shall undertake provisionally the administration of the river in conformity with the provisions of Articles 332 to 337, until such time as a definitive statute regarding the Danube is concluded by the Powers nominated by the Allied and Associated Powers.

ARTICLE 349.

Germany agrees to accept the régime which shall be laid down for the Danube by a Conference of the Powers nominated by the Allied and Associated Powers, which shall meet within one year after the coming into force of the present Treaty, and at which German representatives may be present.

ARTICLE 350.

The mandate given by Article 57 of the Treaty of Berlin of July 13, 1878, to Austria-Hungary, and transferred by her to Hungary, to carry out works at the Iron Gates, is abrogated. The Commission entrusted with the administration of this part of the river shall lay down provisions for the settlement of accounts subject to the financial provisions of the present Treaty. Charges which may be necessary shall in no case be levied by Hungary.

ARTICLE 351.

Should the Czecho-Slovak State, the Serb-Croat-Slovene State or Roumania, with the authorisation of or under mandate from the International Commission, undertake maintenance, improvement, weir, or other works on a part of the river system which forms a frontier, these States shall enjoy on the opposite bank, and also on the part of the bed which is outside their territory, all necessary facilities for the survey, execution and maintenance of such works.

ARTICLE 352.

Germany shall be obliged to make to the European Commission of the Danube all restitutions, reparations and indemnities for damages inflicted on the Commission during the war.

ARTICLE 353.

Should a deep-draught Rhine-Danube navigable waterway be constructed, Germany undertakes to apply thereto the régime prescribed in Articles 332 to 338.

CHAPTER IV.

CLAUSES RELATING TO THE RHINE AND THE MOSELLE.

ARTICLE 354.

As from the coming into force of the present Treaty, the Convention of Mannheim of October 17, 1868, together with the Final Protocol thereof, shall continue to govern navigation on the Rhine, subject to the conditions hereinafter laid down.

In the event of any provisions of the said Convention being in conflict with those laid down by the General Convention referred to in Article 338 (which shall apply to the Rhine) the provisions of the General Convention shall prevail.

Within a maximum period of six months from the coming into force of the present Treaty, the Central Commission referred to in

Article 355 shall meet to draw up a project of revision of the Convention of Mannheim. This project shall be drawn up in harmony with the provisions of the General Convention referred to above should this have been concluded by that time, and shall be submitted to the Powers represented on the Central Commission. Germany hereby agrees to adhere to the project so drawn up.

Further, the modifications set out in the following Articles shall immediately be made in the Convention of Mannheim.

The Allied and Associated Powers reserve to themselves the right to arrive at an understanding in this connection with Holland, and Germany hereby agrees to accede if required to any such understanding.

ARTICLE 355.

The Central Commission provided for in the Convention of Mannheim shall consist of nineteen members, viz.:

- 2 representatives of the Netherlands;
- 2 representatives of Switzerland;
- 4 representatives of German riparian States;
- 4 representatives of France, which in addition shall appoint the President of the Commission;
- 2 representatives of Great Britain;
- 2 representatives of Italy;
- 2 representatives of Belgium.

The headquarters of the Central Commission shall be at Strasburg.

Whatever be the number of members present, each Delegation shall have the right to record a number of votes equal to the number of representatives allotted to it.

If certain of these representatives cannot be appointed at the time of the coming into force of the present Treaty, the decisions of the Commission shall nevertheless be valid.

ARTICLE 356.

Vessels of all nations, and their cargoes, shall have the same rights and privileges as those which are granted to vessels belonging to the Rhine navigation, and to their cargoes.

None of the provisions contained in Articles 15 to 20 and 26 of the above-mentioned Convention of Mannheim, in Article 4 of the Final Protocol thereof, or in later Conventions, shall impede the free navigation of vessels and crews of all nations on the Rhine and on waterways to which such Conventions apply, subject to compliance with the regulations concerning pilotage and other police measures drawn up by the Central Commission.

The provisions of Article 22 of the Convention of Mannheim and of Article 5 of the Final Protocol thereof shall be applied only to vessels registered on the Rhine. The Central Commission shall decide on the steps to be taken to ensure that other vessels satisfy the conditions of the general regulations applying to navigation on the Rhine.

ARTICLE 357.

Within a maximum period of three months from the date on which notification shall be given Germany shall cede to France tugs and

vessels, from among those remaining registered in German Rhine ports after the deduction of those surrendered by way of restitution or reparation, or shares in German Rhine navigation companies.

When vessels and tugs are ceded, such vessels and tugs, together with their fittings and gear, shall be in good state of repair, shall be in condition to carry on commercial traffic on the Rhine, and shall be selected from among those most recently built.

The same procedure shall be followed in the matter of the cession by Germany to France of:

(1) the installations, berthing and anchorage accommodation, platforms, docks, warehouses, plant, etc., which German subjects or German companies owned on August 1, 1914, in the port of Rotterdam, and

(2) the shares or interests which Germany or German nationals possessed in such installations at the same date.

The amount and specifications of such cessions shall be determined within one year of the coming into force of the present Treaty by an arbitrator or arbitrators appointed by the United States of America, due regard being had to the legitimate needs of the parties concerned.

The cessions provided for in the present Article shall entail a credit of which the total amount, settled in a lump sum by the arbitrator or arbitrators mentioned above, shall not in any case exceed the value of the capital expended in the initial establishment of the ceded material and installations, and shall be set off against the total sums due from Germany; in consequence, the indemnification of the proprietors shall be a matter for Germany to deal with.

ARTICLE 358.

Subject to the obligation to comply with the provisions of the Convention of Mannheim or of the Convention which may be substituted therefor, and to the stipulations of the present Treaty, France shall have on the whole course of the Rhine included between the two extreme points of the French frontiers:

- (a) the right to take water from the Rhine to feed navigation and irrigation canals (constructed or to be constructed) or for any other purpose, and to execute on the German bank all works necessary for the exercise of this right;
- (b) the exclusive right to the power derived from works of regulation on the river, subject to the payment to Germany of the value of half the power actually produced, this payment, which will take into account the cost of the works necessary for producing the power, being made either in money or in power and in default of agreement being determined by arbitration. For this purpose France alone shall have the right to carry out in this part of the river all works of regulation (weirs or other works) which she may consider necessary for the production of power. Similarly, the right of taking water from the Rhine is accorded to Belgium to feed the Rhine-Meuse navigable waterway provided for below.

The exercise of the rights mentioned under (a) and (b) of the present Article shall not interfere with navigability nor reduce the facilities for navigation, either in the bed of the Rhine or in the

derivations which may be substituted therefor, nor shall it involve any increase in the tolls formerly levied under the Convention in force. All proposed schemes shall be laid before the Central Commission in order that that Commission may assure itself that these conditions are complied with.

To ensure the proper and faithful execution of the provisions contained in (a) and (b) above, Germany:

(1) binds herself not to undertake or to allow the construction of any lateral canal or any derivation on the right bank of the river opposite the French frontiers;

(2) recognises the possession by France of the right of support on and the right of way over all lands situated on the right bank which may be required in order to survey, to build, and to operate weirs which France, with the consent of the Central Commission, may subsequently decide to establish. In accordance with such consent, France shall be entitled to decide upon and fix the limits of the necessary sites, and she shall be permitted to occupy such lands after a period of two months after simple notification, subject to the payment by her to Germany of indemnities of which the total amount shall be fixed by the Central Commission. Germany shall make it her business to indemnify the proprietors whose property will be burdened with such servitudes or permanently occupied by the works.

Should Switzerland so demand, and if the Central Commission approves, the same rights shall be accorded to Switzerland for the part of the river forming her frontier with other riparian States;

(3) shall hand over to the French Government, during the month following the coming into force of the present Treaty, all projects, designs, drafts of concessions and of specifications concerning the regulation of the Rhine for any purpose whatever which have been drawn up or received by the Governments of Alsace-Lorraine or of the Grand Duchy of Baden.

ARTICLE 359.

Subject to the preceding provisions, no works shall be carried out in the bed or on either bank of the Rhine where it forms the boundary of France and Germany without the previous approval of the Central Commission or of its agents.

ARTICLE 360.

France reserves the option of substituting herself as regards the rights and obligations resulting from agreements arrived at between the Government of Alsace-Lorraine and the Grand Duchy of Baden concerning the works to be carried out on the Rhine; she may also denounce such agreements within a term of five years dating from the coming into force of the present Treaty.

France shall also have the option of causing works to be carried out which may be recognised as necessary by the Central Commission for the upkeep or improvement of the navigability of the Rhine above Mannheim.

ARTICLE 361.

Should Belgium within a period of 25 years from the coming into force of the present Treaty decide to create a deep-draught Rhine-

Meuse navigable waterway, in the region of Ruhrort, Germany shall be bound to construct, in accordance with plans to be communicated to her by the Belgian Government, after agreement with the Central Commission, the portion of this navigable waterway situated within her territory.

The Belgian Government shall, for this purpose, have the right to carry out on the ground all necessary surveys.

Should Germany fail to carry out all or part of these works, the Central Commission shall be entitled to carry them out instead; and, for this purpose, the Commission may decide upon and fix the limits of the necessary sites and occupy the ground after a period of two months after simple notification, subject to the payment of indemnities to be fixed by it and paid by Germany.

This navigable waterway shall be placed under the same administrative régime as the Rhine itself, and the division of the cost of initial construction, including the above indemnities, among the States crossed thereby shall be made by the Central Commission.

ARTICLE 362.

Germany hereby agrees to offer no objection to any proposals of the Central Rhine Commission for extending its jurisdiction:

(1) to the Moselle below the Franco-Luxemburg frontier down to the Rhine, subject to the consent of Luxemburg;

(2) to the Rhine above Basle up to the Lake of Constance, subject to the consent of Switzerland;

(3) to the lateral canals and channels which may be established either to duplicate or to improve naturally navigable sections of the Rhine or the Moselle, or to connect two naturally navigable sections of these rivers, and also any other parts of the Rhine river system which may be covered by the General Convention provided for in Article 338 above.

CHAPTER V.

CLAUSES GIVING TO THE CZECHO-SLOVAK STATE THE USE OF NORTHERN PORTS.

ARTICLE 363.

In the ports of Hamburg and Stettin Germany shall lease to the Czecho-Slovak State, for a period of 99 years, areas which shall be placed under the general régime of free zones and shall be used for the direct transit of goods coming from or going to that State.

ARTICLE 364.

The delimitation of these areas, and their equipment, their exploitation, and in general all conditions for their utilisation, including the amount of the rental, shall be decided by a Commission consisting of one delegate of Germany, one delegate of the Czecho-Slovak State and one delegate of Great Britain. These conditions shall be susceptible of revision every ten years in the same manner.

Germany declares in advance that she will adhere to the decisions so taken.

SECTION III.

RAILWAYS.

CHAPTER I.

CLAUSES RELATING TO INTERNATIONAL TRANSPORT.

ARTICLE 365.

Goods coming from the territories of the Allied and Associated Powers, and going to Germany, or in transit through Germany from or to the territories of the Allied and Associated Powers, shall enjoy on the German railways as regards charges to be collected (rebates and drawbacks being taken into account), facilities, and all other matters, the most favourable treatment applied to goods of the same kind carried on any German lines, either in internal traffic, or for export, import or in transit, under similar conditions of transport, for example as regards length of route. The same rule shall be applied, on the request of one or more of the Allied and Associated Powers, to goods specially designated by such Power or Powers coming from Germany and going to their territories.

International tariffs established in accordance with the rates referred to in the preceding paragraph and involving through way-bills shall be established when one of the Allied and Associated Powers shall require it from Germany.

ARTICLE 366.

From the coming into force of the present Treaty the High Contracting Parties shall renew, in so far as concerns them and under the reserves indicated in the second paragraph of the present Article, the conventions and arrangements signed at Berne on October 14, 1890, September 20, 1893, July 16, 1895, June 16, 1898, and September 19, 1906, regarding the transportation of goods by rail.

If within five years from the date of the coming into force of the present Treaty a new convention for the transportation of passengers, luggage and goods by rail shall have been concluded to replace the Berne Convention of October 14, 1890, and the subsequent additions referred to above, this new convention and the supplementary provisions for international transport by rail which may be based on it shall bind Germany, even if she shall have refused to take part in the preparation of the convention or to subscribe to it. Until a new convention shall have been concluded, Germany shall conform to the provisions of the Berne Convention and the subsequent additions referred to above, and to the current supplementary provisions.

ARTICLE 367.

Germany shall be bound to co-operate in the establishment of through ticket services (for passengers and their luggage) which shall be required by any of the Allied and Associated Powers to ensure their communication by rail with each other and with all other

countries by transit across the territories of Germany; in particular Germany shall, for this purpose, accept trains and carriages coming from the territories of the Allied and Associated Powers and shall forward them with a speed at least equal to that of her best long-distance trains on the same lines. The rates applicable to such through services shall not in any case be higher than the rates collected on German internal services for the same distance, under the same conditions of speed and comfort.

The tariffs applicable under the same conditions of speed and comfort to the transportation of emigrants going to or coming from ports of the Allied and Associated Powers and using the German railways shall not be at a higher kilometer rate than the most favourable tariffs (drawbacks and rebates being taken into account) enjoyed on the said railways by emigrants going to or coming from any other ports.

ARTICLE 368.

Germany shall not apply specially to such through services, or to the transportation of emigrants going to or coming from the ports of the Allied and Associated Powers, any technical, fiscal or administrative measures, such as measures of customs examination, general police, sanitary police, and control, the result of which would be to impede or delay such services.

ARTICLE 369.

In case of transport partly by rail and partly by internal navigation, with or without through way-bill, the preceding Articles shall apply to the part of the journey performed by rail.

CHAPTER II.

ROLLING-STOCK.

ARTICLE 370.

Germany undertakes that German wagons shall be fitted with apparatus allowing:

(1) of their inclusion in goods trains on the lines of such of the Allied and Associated Powers as are parties to the Berne Convention of May 15, 1886, as modified on May 18, 1907, without hampering the action of the continuous brake which may be adopted in such countries within ten years of the coming into force of the present Treaty, and

(2) of the acceptance of wagons of such countries in all goods trains on the German lines.

The rolling stock of the Allied and Associated Powers shall enjoy on the German lines the same treatment as German rolling stock as regards movement, upkeep and repairs.

CHAPTER III.

CESSIONS OF RAILWAY LINES.

ARTICLE 371.

Subject to any special provisions concerning the cession of ports waterways and railways situated in the territories over which Germany abandons her sovereignty, and to the financial conditions relating to the concessionnaires and the pensioning of the personnel, the cession of railways will take place under the following conditions:

(1) The works and installations of all the railroads shall be handed over complete and in good condition.

(2) When a railway system possessing its own rolling-stock is handed over in its entirety by Germany to one of the Allied and Associated Powers, such stock shall be handed over complete, in accordance with the last inventory before November 11, 1918, and in a normal state of upkeep.

(3) As regards lines without any special rolling-stock, Commissions of experts designated by the Allied and Associated Powers, on which Germany shall be represented, shall fix the proportion of the stock existing on the system to which those lines belong to be handed over. These Commissions shall have regard to the amount of the material registered on these lines in the last inventory before November 11, 1918, the length of track (sidings included), and the nature and amount of the traffic. These Commissions shall also specify the locomotives, carriages and wagons to be handed over in each case; they shall decide upon the conditions of their acceptance, and shall make the provisional arrangements necessary to ensure their repair in German workshops.

(4) Stocks of stores, fittings and plant shall be handed over under the same conditions as the rolling-stock.

The provisions of paragraphs 3 and 4 above shall be applied to the lines of former Russian Poland converted by Germany to the German gauge, such lines being regarded as detached from the Prussian State System.

CHAPTER IV.

PROVISIONS RELATING TO CERTAIN RAILWAY LINES.

ARTICLE 372.

When as a result of the fixing of new frontiers a railway connection between two parts of the same country crosses another country, or a branch line from one country has its terminus in another, the conditions of working, if not specifically provided for in the present Treaty, shall be laid down in a convention between the railway administrations concerned. If the administrations cannot come to an agreement as to the terms of such convention, the points of difference shall be decided by commissions of experts composed as provided in the preceding Article.

ARTICLE 373.

Within a period of five years from the coming into force of the present Treaty the Czecho-Slovak State may require the construction of a railway line in German territory between the stations of Schlauney and Nachod. The cost of construction shall be borne by the Czecho-Slovak State.

ARTICLE 374.

Germany undertakes to accept, within ten years of the coming into force of the present Treaty, on request being made by the Swiss Government after agreement with the Italian Government, the denunciation of the International Convention of October 13, 1909, relative to the St. Gothard railway. In the absence of agreement as to the conditions of such denunciation, Germany hereby agrees to accept the decision of an arbitrator designated by the United States of America.

CHAPTER V.

TRANSITORY PROVISIONS.

ARTICLE 375.

Germany shall carry out the instructions given her, in regard to transport, by an authorised body acting on behalf of the Allied and Associated Powers:

(1) For the carriage of troops under the provisions of the present Treaty, and of material, ammunition and supplies for army use;

(2) As a temporary measure, for the transportation of supplies for certain regions, as well as for the restoration, as rapidly as possible, of the normal conditions of transport, and for the organisation of postal and telegraphic services.

SECTION IV.

DISPUTES

AND REVISION OF PERMANENT CLAUSES.

ARTICLE 376.

Disputes which may arise between interested Powers with regard to the interpretation and application of the preceding Articles shall be settled as provided by the League of Nations.

ARTICLE 377.

At any time the League of Nations may recommend the revision of such of these Articles as relate to a permanent administrative régime.

ARTICLE 378.

The stipulations in Articles 321 to 330, 332, 365, and 367 to 369 shall be subject to revision by the Council of the League of Nations at any time after five years from the coming into force of the present Treaty.

Failing such revision, no Allied or Associated Power can claim after the expiration of the above period of five years the benefit of any of the stipulations in the Articles enumerated above on behalf of any portion of its territories in which reciprocity is not accorded in respect of such stipulations. The period of five years during which reciprocity cannot be demanded may be prolonged by the Council of the League of Nations.

SECTION V.

SPECIAL PROVISION.

ARTICLE 379.

Without prejudice to the special obligations imposed on her by the present Treaty for the benefit of the Allied and Associated Powers, Germany undertakes to adhere to any General Conventions regarding the international régime of transit, waterways, ports or railways which may be concluded by the Allied and Associated Powers, with the approval of the League of Nations, within five years of the coming into force of the present Treaty.

SECTION VI.

CAUSES RELATING TO THE KIEL CANAL.

ARTICLE 380.

The Kiel Canal and its approaches shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of entire equality.

ARTICLE 381.

The nationals, property and vessels of all Powers shall, in respect of charges, facilities, and in all other respects, be treated on a footing of perfect equality in the use of the Canal, no distinction being made to the detriment of nationals, property and vessels of any Power between them and the nationals, property and vessels of Germany or of the most favoured nation.

No impediment shall be placed on the movement of persons or vessels other than those arising out of police, customs, sanitary, emigration or immigration regulations and those relating to the import or export of prohibited goods. Such regulations must be reasonable and uniform and must not unnecessarily impede traffic.

ARTICLE 382.

Only such charges may be levied on vessels using the Canal or its approaches as are intended to cover in an equitable manner the cost

of maintaining in a navigable condition, or of improving, the Canal or its approaches, or to meet expenses incurred in the interests of navigation. The schedule of such charges shall be calculated on the basis of such expenses, and shall be posted up in the ports.

These charges shall be levied in such a manner as to render any detailed examination of cargoes unnecessary, except in the case of suspected fraud or contravention.

ARTICLE 383.

Goods in transit may be placed under seal or in the custody of customs agents; the loading and unloading of goods, and the embarkation and disembarkation of passengers, shall only take place in the ports specified by Germany.

ARTICLE 384.

No charges of any kind other than those provided for in the present Treaty shall be levied along the course or at the approaches of the Kiel Canal.

ARTICLE 385.

Germany shall be bound to take suitable measures to remove any obstacle or danger to navigation, and to ensure the maintenance of good conditions of navigation. She shall not undertake any works of a nature to impede navigation on the Canal or its approaches.

ARTICLE 386.

In the event of violation of any of the conditions of Articles 380 to 386, or of disputes as to the interpretation of these Articles, any interested Power can appeal to the jurisdiction instituted for the purpose by the League of Nations.

In order to avoid reference of small questions to the League of Nations, Germany will establish a local authority at Kiel qualified to deal with disputes in the first instance and to give satisfaction so far as possible to complaints which may be presented through the consular representatives of the interested Powers.

PART XIV.

GUARANTEES.

SECTION 1.

WESTERN EUROPE.

ARTICLE 428.

As a guarantee for the execution of the present Treaty by Germany, the German territory situated to the west of the Rhine, together with the bridgeheads, will be occupied by Allied and Associated troops for a period of fifteen years from the coming into force of the present Treaty.

ARTICLE 429.

If the conditions of the present Treaty are faithfully carried out by Germany, the occupation referred to in Article 428 will be successively restricted as follows:

(1) At the expiration of five years there will be evacuated: the bridgehead of Cologne and the territories north of a line running along the Ruhr, then along the railway Jülich, Düren, Euskirchen, Rheinbach, thence along the road Rheinbach to Sinzig, and reaching the Rhine at the confluence with the Ahr; the roads, railways and places mentioned above being excluded from the area evacuated.

(2) At the expiration of ten years there will be evacuated: the bridgehead of Coblenz and the territories north of a line to be drawn from the intersection between the frontiers of Belgium, Germany and Holland, running about from 4 kilometres south of Aix-la-Chapelle, then to and following the crest of Forst Gemünd, then east of the railway of the Urft Valley, then along Blankenheim, Valdorf, Dreis, Ulmen to and following the Moselle from Bremm to Nehren, then passing by Kappel and Simmern, then following the ridge of the heights between Simmern and the Rhine and reaching this river at Bacharach; all the places, valleys, roads and railways mentioned above being excluded from the area evacuated.

(3) At the expiration of fifteen years there will be evacuated: the bridgehead of Mainz, the bridgehead of Kehl and the remainder of the German territory under occupation.

If at that date the guarantees against unprovoked aggression by Germany are not considered sufficient by the Allied and Associated Governments, the evacuation of the occupying troops may be delayed to the extent regarded as necessary for the purpose of obtaining the required guarantees.

ARTICLE 430.

In case either during the occupation or after the expiration of the fifteen years referred to above the Reparation Commission finds that Germany refuses to observe the whole or part of her obligations under the present Treaty with regard to reparation, the whole or part of the areas specified in Article 429 will be re-occupied immediately by the Allied and Associated forces.

ARTICLE 431.

If before the expiration of the period of fifteen years Germany complies with all the undertakings resulting from the present Treaty, the occupying forces will be withdrawn immediately.

ARTICLE 432.

All matters relating to the occupation and not provided for by the present Treaty shall be regulated by subsequent agreements, which Germany hereby undertakes to observe.

SECTION II.

EASTERN EUROPE.

ARTICLE 433.

As a guarantee for the execution of the provisions of the present Treaty, by which Germany accepts definitely the abrogation of the Brest-Litovsk Treaty, and of all treaties, conventions and agreements entered into by her with the Maximalist Government in Russia, and in order to ensure the restoration of peace and good government in the Baltic Provinces and Lithuania, all German troops at present in the said territories shall return to within the frontiers of Germany as soon as the Governments of the Principal Allied and Associated Powers shall think the moment suitable, having regard to the internal situation of these territories. These troops shall abstain from all requisitions and seizures and from any other coercive measures, with a view to obtaining supplies intended for Germany, and shall in no way interfere with such measures for national defence as may be adopted by the Provisional Governments of Esthonia, Latvia and Lithuania.

No other German troops shall, pending the evacuation or after the evacuation is complete, be admitted to the said territories.

PART XV.

MISCELLANEOUS PROVISIONS.

ARTICLE 434.

Germany undertakes to recognise the full force of the Treaties of Peace and Additional Conventions which may be concluded by the Allied and Associated Powers with the Powers who fought on the side of Germany and to recognise whatever dispositions may be made concerning the territories of the former Austro-Hungarian Monarchy, of the Kingdom of Bulgaria and of the Ottoman Empire, and to recognize the new States within their frontiers as there laid down.

ARTICLE 435.

The High Contracting Parties, while they recognize the guarantees stipulated by the Treaties of 1815, and especially by the Act of November 20, 1815, in favour of Switzerland, the said guarantees constituting international obligations for the maintenance of peace, declare nevertheless that the provisions of these treaties, conventions, declarations and other supplementary Acts concerning the neutralized zone of Savoy, as laid down in paragraph 1 of Article 92 of the Final Act of the Congress of Vienna and in paragraph 2 of Article 3 of the Treaty of Paris of November 20, 1815, are no longer consistent with present conditions. For this reason the High Contracting Parties take note of the agreement reached between the French Government and the Swiss Government for the abrogation of the stipulations relating to this zone which are and remain abrogated.

The High Contracting Parties also agree that the stipulations of the Treaties of 1815 and of the other supplementary Acts concerning

the free zones of Upper Savoy and the Gex district are no longer consistent with present conditions, and that it is for France and Switzerland to come to an agreement together with a view to settling between themselves the status of these territories under such conditions as shall be considered suitable by both countries.

ANNEX.

I

The Swiss Federal Council has informed the French Government on May 5, 1919, that after examining the provisions of Article 435 in a like spirit of sincere friendship it has happily reached the conclusion that it was possible to acquiesce in it under the following conditions and reservations:

(1) The neutralized zone of Haute-Savoie:

(a) It will be understood that as long as the Federal Chambers have not ratified the agreement come to between the two Governments concerning the abrogation of the stipulations in respect of the neutralized zone of Savoy, nothing will be definitively settled, on one side or the other, in regard to this subject.

(b) The assent given by the Swiss Government to the abrogation of the above mentioned stipulations presupposes, in conformity with the text adopted, the recognition of the guarantees formulated in favour of Switzerland by the Treaties of 1815 and particularly by the Declaration of November 20, 1815.

(c) The agreement between the Governments of France and Switzerland for the abrogation of the above mentioned stipulations will only be considered as valid if the Treaty of Peace contains this Article in its present wording. In addition the Parties to the Treaty of Peace should endeavour to obtain the assent of the signatory Powers of the Treaties of 1815 and of the Declaration of November 20, 1815, which are not signatories of the present Treaty of Peace.

(2) Free zone of Haute-Savoie and the district of Gex:

(a) The Federal Council makes the most express reservations to the interpretation to be given to the statement mentioned in the last paragraph of the above Article for insertion in the Treaty of Peace, which provides that "the stipulations of the Treaties of 1815 and other supplementary acts concerning the free zones of Haute-Savoie and the Gex district are no longer consistent with present conditions". The Federal Council would not wish that its acceptance of the above wording should lead to the conclusion that it would agree to the suppression of a system intended to give neighbouring territory the benefit of a special régime which is appropriate to the geographical and economic situation and which has been well tested.

In the opinion of the Federal Council the question is not the modification of the customs system of the zones as set up by the Treaties mentioned above, but only the regulation in a manner more appropriate to the economic conditions of the present day of the terms of the exchange of goods between the regions in question. The Federal Council has been led to make the preceding observations by the perusal of the draft Convention concerning the future constitution of the zones which was annexed to the note of April 26 from the French Government. While making the above reservations the Federal

Council declares its readiness to examine in the most friendly spirit any proposals which the French Government may deem it convenient to make on the subject.

(b) It is conceded that the stipulations of the Treaties of 1815 and other supplementary acts relative to the free zones will remain in force until a new arrangement is come to between France and Switzerland to regulate matters in this territory.

II

The French Government have addressed to the Swiss Government, on May 18, 1919, the following note in reply to the communication set out in the preceding paragraph:

In a note dated May 5 the Swiss Legation in Paris was good enough to inform the Government of the French Republic that the Federal Government adhered to the proposed Article to be inserted in the Treaty of Peace between the Allied and Associated Governments and Germany.

The French Government have taken note with much pleasure of the agreement thus reached, and, at their request, the proposed Article, which had been accepted by the Allied and Associated Governments, has been inserted under No. 435 in the Peace conditions presented to the German Plenipotentiaries.

The Swiss Government, in their note of May 5 on this subject, have expressed various views and reservations.

Concerning the observations relating to the free zones of Haute-Savoie and the Gex district, the French Government have the honour to observe that the provisions of the last paragraph of Article 435 are so clear that their purport cannot be misapprehended, especially where it implies that no other Power but France and Switzerland will in future be interested in that question.

The French Government, on their part, are anxious to protect the interests of the French territories concerned, and, with that object, having their special situation in view, they bear in mind the desirability of assuring them a suitable customs régime and determining, in a manner better suited to present conditions, the methods of exchanges between these territories and the adjacent Swiss territories, while taking into account the reciprocal interests of both regions.

It is understood that this must in no way prejudice the right of France to adjust her customs line in this region in conformity with her political frontier, as is done on the other portions of her territorial boundaries, and as was done by Switzerland long ago on her own boundaries in this region.

The French Government are pleased to note on this subject in what a friendly disposition the Swiss Government take this opportunity of declaring their willingness to consider any French proposal dealing with the system to be substituted for the present régime of the said free zones, which the French Government intend to formulate in the same friendly spirit.

Moreover, the French Government have no doubt that the provisional maintenance of the régime of 1815 as to the free zones referred to in the above mentioned paragraph of the note from the Swiss Legation of May 5, whose object is to provide for the passage from the present régime to the conventional régime, will cause no

delay whatsoever in the establishment of the new situation which has been found necessary by the two Governments. This remark applies also to the ratification by the Federal Chambers, dealt with in paragraph 1 (a), of the Swiss note of May 5, under the heading "Neutralized zone of Haute-Savoie".

ARTICLE 436.

The High Contracting Parties declare and place on record that they have taken note of the Treaty signed by the Government of the French Republic on July 17, 1918, with His Serene Highness the Prince of Monaco defining the relations between France and the Principality.

ARTICLE 437.

The High Contracting Parties agree that, in the absence of a subsequent agreement to the contrary, the Chairman of any Commission established by the present Treaty shall in the event of an equality of votes be entitled to a second vote.

ARTICLE 438.

The Allied and Associated Powers agree that where Christian religious missions were being maintained by German societies or persons in territory belonging to them, or of which the government is entrusted to them in accordance with the present Treaty, the property which these missions or missionary societies possessed, including that of trading societies whose profits were devoted to the support of missions, shall continue to be devoted to missionary purposes. In order to ensure the due execution of this undertaking the Allied and Associated Governments will hand over such property to boards of trustees appointed by or approved by the Governments and composed of persons holding the faith of the Mission whose property is involved.

The Allied and Associated Governments, while continuing to maintain full control as to the individuals by whom the Missions are conducted, will safeguard the interests of such Missions.

Germany, taking note of the above undertaking, agrees to accept all arrangements made or to be made by the Allied or Associated Government concerned for carrying on the work of the said missions or trading societies and waives all claims on their behalf.

ARTICLE 439.

Without prejudice to the provisions of the present Treaty, Germany undertakes not to put forward directly or indirectly against any Allied or Associated Power, signatory of the present Treaty, including those which without having declared war, have broken off diplomatic relations with the German Empire, any pecuniary claim based on events which occurred at any time before the coming into force of the present Treaty.

The present stipulation will bar completely and finally all claims of this nature, which will be thenceforward extinguished, whoever may be the parties in interest.

ARTICLE 440.

Germany accepts and recognises as valid and binding all decrees and orders concerning German ships and goods and all orders relating to the payment of costs made by any Prize Court of any of the Allied or Associated Powers, and undertakes not to put forward any claim arising out of such decrees or orders on behalf of any German national.

The Allied and Associated Powers reserve the right to examine in such manner as they may determine all decisions and orders of German Prize Courts, whether affecting the property rights of nationals of those Powers or of neutral Powers. Germany agrees to furnish copies of all the documents constituting the record of the cases, including the decisions and orders made, and to accept and give effect to the recommendations made after such examination of the cases.

THE PRESENT TREATY, of which the French and English texts are both authentic, shall be ratified.

The deposit of ratifications shall be made at Paris as soon as possible.

Powers of which the seat of the Government is outside Europe will be entitled merely to inform the Government of the French Republic through their diplomatic representative at Paris that their ratification has been given; in that case they must transmit the instrument of ratification as soon as possible.

A first procès-verbal of the deposit of ratifications will be drawn up as soon as the Treaty has been ratified by Germany on the one hand, and by three of the Principal Allied and Associated Powers on the other hand.

From the date of this first procès-verbal the Treaty will come into force between the High Contracting Parties who have ratified it. For the determination of all periods of time provided for in the present Treaty this date will be the date of the coming into force of the Treaty.

In all other respects the Treaty will enter into force for each Power at the date of the deposit of its ratification.

The French Government will transmit to all the signatory Powers a certified copy of the procès-verbaux of the deposit of ratifications.

IN FAITH WHEREOF the above-named Plenipotentiaries have signed the present Treaty.

Done at Versailles, the twenty-eighth day of June, one thousand nine hundred and nineteen, in a single copy which will remain deposited in the archives of the French Republic, and of which authenticated copies will be transmitted to each of the Signatory Powers.

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TREATY SERIES, No. 665

AGREEMENT
BETWEEN
THE UNITED STATES AND GERMANY
FOR A
MIXED COMMISSION TO DETERMINE THE AMOUNT TO
BE PAID BY GERMANY IN SATISFACTION OF GERMANY'S
FINANCIAL OBLIGATIONS UNDER THE TREATY
CONCLUDED BETWEEN THE TWO GOV-
ERNMENTS ON AUGUST 25, 1921

SIGNED AUGUST 10, 1922



WASHINGTON
GOVERNMENT PRINTING OFFICE
1923

TREATY SERIES No. 686

TREATY

THE UNITED STATES AND GERMANY

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL GOVERNMENT OF GERMANY FOR THE EXCHANGE OF CERTAIN GERMAN CITIZENS AND NATURALIZED AMERICANS WHOSE NAMES ARE LISTED IN THE ATTACHED SCHEDULES

1921



OFFICE OF THE SECRETARY OF STATE
WASHINGTON, D. C.

Agreement.

The United States of America
and
Germany

being desirous of determining the amount to be paid by Germany in satisfaction of Germany's financial obligations under the Treaty concluded by the two Governments on August 25, 1921, which secures to the United States and its nationals rights specified under a resolution of the Congress of the United States of July 2, 1921, including rights under the Treaty of Versailles, have resolved to submit the questions for decision to a mixed commission and have appointed as their plenipotentiaries for the purpose of concluding the following agreement:

THE PRESIDENT OF THE
UNITED STATES OF AMERICA

ALANSON B. HOUGHTON, Ambassador Extraordinary and Plenipotentiary of the United States of America to Germany,

and

THE PRESIDENT OF THE
GERMAN EMPIRE

Dr. WIRTH, Chancellor of the German Empire,

Abkommen.

Die Vereinigten Staaten von
Amerika
und
Deutschland,

von dem Wunsche beseelt, die Summe festzusetzen, die Deutschland in Erfüllung seiner finanziellen Verpflichtungen aus dem zwischen den beiden Regierungen am 25. August 1921 abgeschlossenen Vertrag zu zahlen hat, welcher den Vereinigten Staaten und deren Staatsangehörigen in einem Beschluss des Kongresses der Vereinigten Staaten vom 2. Juli 1921 näher bezeichnete Rechte, einschliesslich solcher aus dem Vertrag von Versailles sichert, haben beschlossen, die Fragen zur Entscheidung einer gemischten Kommission zu überweisen und haben zu ihren Bevollmächtigten für den Abschluss des nachstehenden Abkommens ernannt:

der Präsident der Vereinigten Staaten von Amerika

den ausserordentlichen und bevollmächtigten Botschafter der Vereinigten Staaten von Amerika in Deutschland Alanson B. Houghton

und

der Präsident des Deutschen Reichs

den Deutschen Reichskanzler Dr. Wirth,

Who, having communicated their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I.

The commission shall pass upon the following categories of claims which are more particularly defined in the Treaty of August 25, 1921, and in the Treaty of Versailles:

(1) Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights and interests, including any company or association in which they are interested, within German territory as it existed on August 1, 1914;

(2) Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to persons, or to property, rights and interests, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

(3) Debts owing to American citizens by the German Government or by German nationals.

ARTICLE II.

The Government of the United States and the Government of Germany shall each appoint one commissioner. The two Governments shall by agreement select an umpire to decide upon any cases concerning which the commissioners may disagree, or upon any points of difference that may arise in the course of their pro-

welche nach Austausch ihrer für gut und richtig befundenen Vollmachten folgendes vereinbart haben:

Artikel I.

Die Kommission soll über die folgenden Arten von Ansprüchen befinden, die des Näheren im Vertrag vom 25. August 1921 und in dem Vertrag von Versailles bezeichnet sind:

1. Ansprüche amerikanischer Bürger, die seit dem 31. Juli 1914 aus der Schädigung oder Beschlagnahme ihrer Güter, Rechte und Interessen erwachsen sind, einschliesslich jeder Gesellschaft oder Vereinigung, an denen sie beteiligt sind, innerhalb des Deutschen Reichsgebiets, wie es am 1. August 1914 bestand;

2. Andere Ansprüche aus Verlust oder Schaden, den die Vereinigten Staaten oder ihre Staatsangehörigen infolge des Krieges durch Verletzung von Personen oder von Gütern, von Rechten und Interessen, einschliesslich jeder Gesellschaft oder Vereinigung, an denen amerikanische Staatsangehörige beteiligt sind, seit dem 31. Juli 1914 erlitten haben;

3. Schulden der Deutschen Regierung oder deutscher Staatsangehöriger an amerikanische Bürger.

Artikel II.

Die Regierung der Vereinigten Staaten und die Deutsche Regierung sollen je einen Kommissar ernennen. Die beiden Regierungen sollen auf Grund einer Vereinbarung einen Unparteiischen auswählen, um über alle Fälle zu entscheiden, in denen die Kommissare verschiedener Meinung sein sollten, oder über alle strittigen Punkte, die sich im Laufe der Verhandlungen zwischen ihnen ergeben sollten.

ceedings. Should the umpire or any of the commissioners die or retire, or be unable for any reason to discharge his functions, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

Sollte der Unparteiische oder einer der Kommissare sterben oder zurücktreten oder aus irgend einem Grunde nicht in der Lage sein, seinen Obliegenheiten nachzukommen, so soll dasselbe Verfahren, das bei seiner Ernennung beobachtet worden ist, für die Neubesetzung der freigewordenen Stelle angewandt werden.

ARTICLE III.

Artikel III.

The commissioners shall meet at Washington within two months after the coming into force of the present agreement. They may fix the time and the place of their subsequent meetings according to convenience.

Die Kommissare sollen innerhalb zweier Monate nach dem Inkrafttreten dieses Abkommens in Washington zusammentreten. Sie können Zeit und Ort ihrer weiteren Zusammenkünfte festsetzen, wie es zweckmässig erscheint.

ARTICLE IV.

Artikel IV.

The commissioners shall keep an accurate record of the questions and cases submitted and correct minutes of their proceedings. To this end each of the Governments may appoint a secretary, and these secretaries shall act together as joint secretaries of the commission and shall be subject to its direction.

Die Kommissare sollen die ihnen unterbreiteten Fragen und Fälle sorgfältig registrieren und genaue Protokolle über ihre Verhandlungen führen. Zu diesem Zwecke kann jede der beiden Regierungen einen Sekretär ernennen, und diese Sekretäre sollen als gemeinsame Sekretäre der Kommission zusammenarbeiten und sollen deren Weisungen unterworfen sein.

The commission may also appoint and employ any other necessary officer or officers to assist in the performance of its duties. The compensation to be paid to any such officer or officers shall be subject to the approval of the two Governments.

Die Kommission kann auch irgendwelche andere erforderliche Beamte zur Unterstützung bei der Ausübung ihrer Aufgaben ernennen und anstellen. Die jedem derartigen Beamten zu zahlende Vergütung soll der Zustimmung beider Regierungen unterliegen.

ARTICLE V.

Artikel V.

Each Government shall pay its own expenses, including compensation of its own commissioner, agent or counsel. All other expenses which by their nature are a charge on both Gov-

Jede Regierung soll ihre eigenen Ausgaben, einschliesslich der Vergütung an ihren eigenen Kommissar, Vertreter oder Anwalt bezahlen. Alle anderen Ausgaben, die ihrer Natur nach beiden

ernments, including the honorarium of the umpire, shall be borne by the two Governments in equal moieties.

ARTICLE VI.

The two Governments may designate agents and counsel who may present oral or written arguments to the commission.

The commission shall receive and consider all written statements or documents which may be presented to it by or on behalf of the respective Governments in support of or in answer to any claim.

The decisions of the commission and those of the umpire (in case there may be any) shall be accepted as final and binding upon the two Governments.

ARTICLE VII.

The present agreement shall come into force on the date of its signature.

IN FAITH WHEREOF, the above named plenipotentiaries have signed the present agreement and have hereunto affixed their seals.

Done in duplicate at Berlin this tenth day of August, 1922.

[SEAL.]

ALANSON B. HOUGHTON.

[SEAL.]

WIRTH.

Regierungen zur Last fallen, einschliesslich der Bezüge für den Unparteiischen, sollen von den beiden Regierungen zu gleichen Teilen getragen werden.

Artikel VI.

Die beiden Regierungen können Vertreter und Anwälte bestimmen, die der Kommission mündliche oder schriftliche Beweisgründe unterbreiten können.

Die Kommission soll alle schriftlichen Erklärungen oder Urkunden, die ihr von einer der beiden Regierungen oder zu ihren Gunsten zwecks Unterstützung eines Anspruchs oder zur Erwidierung auf einen solchen vorgelegt werden, in Empfang nehmen und berücksichtigen.

Die Entscheidungen der Kommission und die des Unparteiischen (falls solche vorkommen sollten) sollen als entgeltig und für die beiden Regierungen bindend angenommen werden.

Artikel VII.

Dieses Abkommen soll am Tage der Unterzeichnung in Kraft treten.

Zu Urkund dessen haben die obengenannten Bevollmächtigten das vorliegende Abkommen unterzeichnet und ihre Siegel beigefügt.

Ausgefertigt in doppelter Urschrift in Berlin am 10. August 1922.

[SEAL.]

ALANSON B. HOUGHTON.

[SEAL.]

WIRTH.

[EXCHANGE OF NOTES.]

[*The German Chancellor to the American Ambassador at Berlin.*][*Translation.*]Foreign Office.
No. III A 2451.*Berlin, August 10, 1922.*

Mr. Ambassador,

In reply to your kind note of June 23, 1922, I have the honor to state to your Excellency as follows:

The German Government is in agreement with the draft of an agreement communicated to it in the note mentioned, now that some changes in the text have been agreed upon with your Excellency. I have the honor to transmit herewith the draft modified accordingly.

From the numerous conferences which have taken place with your Excellency, the German Government believes itself justified in assuming that it is not the intention of the American Government to insist in the proceedings of the Commission upon all the claims contemplated in the Versailles Treaty without exception, that it in particular does not intend to raise claims such as those included in Paragraphs 5 to 7 of Annex 1 of Article 244 of the Versailles Treaty (claims for reimbursement of military pensions paid by the American Government, and of allowances paid to American prisoners of war or their families and to the families of persons mobilised) or indeed claims going beyond the Treaty of August 25, 1921.

The German Government would be grateful if your Excellency would confirm the correctness of this assumption.

In the view of the German Government it would furthermore be in the interest of both Governments concerned that the work of the Commission be carried out as quickly as possible. In order to insure this it might be expedient to fix a period for the reporting of the claims to be considered by the Commission. The German Government, therefore, proposes that the Commission should consider only such claims as are brought before it within at least six months after its first meeting as provided in Article III of the above-named agreement.

I should be obliged to your Excellency for a statement as to whether the American Government is in agreement herewith.

At the same time I take advantage of this occasion to renew to you, Mr. Ambassador, the assurance of my most distinguished consideration.

WIRTH.

[*The American Ambassador at Berlin to the German Chancellor.*]

No. 128.

AMERICAN EMBASSY,
Berlin, August 10, 1922.

Mr. Chancellor:

I have the honor to acknowledge the receipt of your note of today's date transmitting the draft of the agreement enclosed to you in my note of June 23, as modified as a result of the negotiations that have been carried on between us.

In accordance with the instructions that I have received from my Government, I am authorized by the President to state that he has no intention of pressing against Germany or of presenting to the Commission established under the claims agreement any claims not covered by the Treaty of August 25, 1921, or any claims falling within Paragraphs 5 to 7, inclusive, of the annex following Article 244 of the treaty of Versailles.

With regard to your suggestion that the Commission shall only consider such claims as are presented to it within six months after its first meeting, as provided for in Article III, I have the honor to inform you that I am now in receipt of instructions from my Government to the effect that it agrees that notices of all claims to be presented to the Commission must be filed within the period of six months as above stated.

I avail myself once more of the opportunity to renew to you, Mr. Chancellor, the assurances of my most distinguished consideration.

A. B. HOUGHTON.

Dr. WIRTH,
Chancellor of the German Empire,
Berlin.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 678.

DIRECTION DER DISCONTO GESELLSCHAFT,

APPELLANT.

UNITED STATES STEEL CORPORATION, PUBLIC
TRUSTEE, EGREMONT JOHN MILLS, ET AL.,
ETC.

No. 677.

BANK FÜR HANDEL UND INDUSTRIE, APPELLANT.

UNITED STATES STEEL CORPORATION, PUBLIC
TRUSTEE, ENGLISH ASSOCIATION OF AMERI-
CAN BOND AND SHAREHOLDERS, LIMITED,
ET AL.

BRIEF ON BEHALF OF APPELLANTS.

Respectfully submitted,

ALFRED K. NIPPERT,

JOHN WILSON BROWN, III,

JOHN WELD PECK,

Appellants' Attorneys.

Errata.

Page 31, line 20, the word "plaintiff" should read "appellee."

Page 59, line 12, the word "Incorporated" should read "Incorporeal."

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I.

This case presents a single issue: whether seizure of certificates in Great Britain constitutes an effective seizure of shares in a New Jersey corporation.

This issue the Trustee gives three forms: "(1) by seizure of the certificates I seized the shares themselves; (2) or the rights in the shares; (3) or, if neither, my attempts at seizure are effective because of the general confirmations of the Treaty of Versailles."

But since general terms of confirmation operate only on actual accomplishments, the Trustee's contention (3) must have its basis upon contention (1) or (2). Since succession to a "right" can only arise from action by or upon the possessor, the subject matter or the obligor, the Trustee's contention (2) must have its basis upon contention (1)—action upon the shares themselves, the subject matter—for neither the possessor nor an obligor, in respect of any right in the shares, was within his territorial jurisdiction.

Therefore the Trustee's contentions (2) and (3) can stand only if his contention (1) stands. Wherefore this is the sole issue, for our entire case is based on the proposition that a seizure of certificates in Great Britain does not constitute a seizure of the shares of the New Jersey corporation represented thereby

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II.

The very foundation of this case must be examined for its determination; the question of fact and law, whether the shares in suit were at all actually within the territory of England so that jurisdiction might be founded thereon. The basis of jurisdiction is actual power and its existence must be determined by close adhesion to the actual facts.

The question here is not as to where fictions of convenience have, from time to time, thrown shares for purpose of taxation, administration and the like. The proper operation of any fiction is to prevent an injury or remedy an inconvenience, and cannot extend to work an injury by covering inquiry into the true facts when those facts themselves are vital.

But the question is: Where can power be exerted so as to actually, irrevocably and effectively subject all that there is of a share of stock to that power.

The answer is, obviously, where the corporation is, and there only. Then that, alone, is where a share is for the purpose of seizure.....

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III.

Shares, similar to those in suit, have such existence at the corporate domicile as to found jurisdiction in rem, and may be levied upon, attached and garnished by service on the corporation, although the certificate, its holder and its owner be outside the jurisdiction.....

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IV.

The test of jurisdiction in rem over shares of stock is the power of effective control. This necessarily includes power over the corporation itself to enforce a complete and effective transfer in form and in fact of such shares in accordance with the judgment of the sovereign unaided by any other sovereign. Shares, therefore, cannot be captured except at some domicile of the corporation where such transfer can be enforced. The presence of endorsed certificates beyond such domicile is not enough.....

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V.

When the Trustee prayed for affirmative relief instead of mere dismissal of this bill, he in effect admitted that he had not the shares but must be put in possession by the courts of this country.

Indeed, the very vesting orders whereon the Trustee's claims are based distinguish between the "scheduled documents of title" and the "right, title and interest in and to the scheduled securities".....

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Our foregoing discussion shows not only that the Trustee could not seize the shares by seizure of the certificates, but that mere possession of certificates confers no rights in the shares under our municipal law nor, indeed, under the municipal law of England.

But the criterion of effectiveness of the exercise of the belligerent right of seizure is, perhaps, more properly international law. International law is clear and sweeping in its principle that incorporeal things, including rights, can be seized only by seizure of the corporeal thing to which the right is attached. Were that not so, any sovereign might by his own laws situate incorporeal things within his jurisdiction and then proceed under color of right established by his law to possess the thing corporeal, in whatever country it was situate.....

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VII.

No confirmations of the Treaty of Versailles apply because: (a) they were limited to property within the respective nations by the terms of the Treaty itself, and (b) the Treaty itself, for its own purposes, defines shares of stock as property at the domicile of the corporation.....

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VIII.

The Trustee can trace no claim to these shares through the Treaty of Berlin, since the only possible effect which that Treaty might be conceived to have upon these shares would be to place them at the disposal of our Congress. But that Treaty did not affect these shares at all.....

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IX.

No one can deny that up to the conclusion of peace between Germany and the United States in 1921 these shares were in the power of the United States alone. If the United States had exerted that power to seize them, the appellants could have already received them back under existing legislation of the United States.

Since that time these shares could not come within the power or control of Great Britain except by some delivery over,

actual or constructive, by the United States. If these shares are so delivered over to the British Trustee, it is for virtual confiscation.

When the District Court took jurisdiction of this case, its processes operated upon these shares within its jurisdiction and its decree compelling the Steel Corporation to recognize the Trustee as owner was in effect a fresh and original delivery over to the Trustee. This no law of the United States gave the court jurisdiction to do; indeed, this contravened the policies of the United States as expressed in its legislation and treaties.....

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 676.

DIRECTION DER DISCONTO GESELLSCHAFT,
APPELLANT,

vs.

UNITED STATES STEEL CORPORATION, PUBLIC
TRUSTEE, EGREMONT JOHN MILLS, ET AL.,
ETC.

No. 677.

BANK FÜR HANDEL UND INDUSTRIE, APPELLANT,

vs.

UNITED STATES STEEL CORPORATION, PUBLIC
TRUSTEE, ENGLISH ASSOCIATION OF AMERI-
CAN BOND AND SHAREHOLDERS, LIMITED,
ET AL.

BRIEF ON BEHALF OF APPELLANTS.

STATEMENT OF FACTS.

The Pleadings.

These are two suits arising out of similar facts and circumstances.

The plaintiff, Direction der Disconto-Gesellschaft, showed in its bill of complaint (R., 1) that it was a banking cor-

poration of Germany, and that at the outbreak of war between Great Britain and Germany plaintiff owned 100 shares of common stock of the United States Steel Corporation registered in the name of Marks, Bulteel, Mills & Co., an English banking house, and that certificates thereof were at plaintiff's branch at London. The bill further showed that during the war the Public Trustee of England seized these certificates—Public Trustee is a corporation sole, a public office of the Kingdom of Great Britain—and since said outbreak of war plaintiff had done nothing to diminish its ownership of said shares; that none of said shares or certificates had been demanded or seized by the Alien Property Custodian of the United States. Therefore the plaintiff averred that it was still the owner of said shares and entitled to the privileges of such ownership, but that the United States Steel Corporation had refused to recognize these privileges while said certificates were in the possession of the Public Trustee. The plaintiff alleged that the defendant, Public Trustee, insisted that he had title to the shares, among other things, by reason of the Treaty of Berlin and the laws of the United States, and thus he created a cloud upon plaintiff's title to the shares.

The parties named defendant in the bill were the United States Steel Corporation, Public Trustee, and Marks, Bulteel, Mills & Co.

The United States Steel Corporation appeared (R., 3). Public Trustee appeared (R., 4) and waived

“immunity from suit as an officer of a foreign sovereign government in his official capacity,”

but

"without prejudice to the objections of said defendant, Public Trustee, that by reason of the provisions of the Treaty of Versailles and the Treaty of Berlin, and the laws of the United States, Great Britain and Germany, this Honorable Court is without jurisdiction to entertain this suit."

The partners of Marks, Bulteel, Mills & Co. appeared (R., 4). These latter, by answer later filed (R., 19), substantially disclaimed interest in the subject-matter of the suit and thus are of no further interest in this proceeding.

The United States Steel Corporation filed answer (R., 5). This answer denies knowledge as to plaintiff's title and admits that since the outbreak of war between Great Britain and Germany plaintiff had done nothing to diminish its ownership of such shares, except in so far as plaintiff's ownership may have been vested in the Public Trustee or in so far as the United States may have acquired some right, title or interest in said shares; admits that none of said shares or certificates had been demanded or seized by the Alien Property Custodian of the United States.

This answer of the Steel Corporation alleges that plaintiff gave notice to the Steel Corporation on the 16th day of May, 1923, that plaintiff was the owner of said shares of stock and entitled to the dividends thereon notwithstanding the fact that the certificates representing the same had been seized by and were in the possession of the defendant Public Trustee; it further alleges that thereafter claim was made by Public Trustee to the effect that Public Trustee was the owner of said shares of stock on the ground, among others, that by virtue

of the seizure of said certificates in the Kingdom of Great Britain title to said shares had vested in the Public Trustee.

This answer also alleges that defendant Steel Corporation, as a disinterested stakeholder as between said conflicting claimants, advised said claimants that it would decline to recognize the alleged ownership of any of said claimants until judicially established by a court of competent jurisdiction.

The answer of the Steel Corporation further shows the Court sundry sections of the corporation laws of the State of New Jersey, where it is incorporated, extracts from its certificate of incorporation and by-laws, including Section 2 of Article V thereof:

“Transfer of Shares.—Shares in the capital stock of the Company shall be transferred only on the books of the Company by the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares.”

Defendant Steel Corporation further alleges that under the common and statute law of the State of New Jersey the *situs* of the shares of stock of the Steel Corporation is within the State of New Jersey, for some purposes at least.

The answer of defendant Public Trustee (R., 12) admits that the plaintiff is and has since August 1, 1914, been a corporation duly organized by and existing under the laws of the Empire of Germany and a citizen of said Empire, having its principal place of business at Berlin, Germany.

Admits that the defendant United States Steel Corporation is a corporation duly organized by and existing under the laws of the State of New Jersey and a citizen of said State, having its principal place of business therein.

Admits that at the outbreak of war between Great Britain and Germany in 1914 plaintiff owned 100 shares of common stock of the United States Steel Corporation, represented by certificates Nos. H 394943/50, inclusive, and H 402081/2, inclusive, for 10 shares each, registered in the name of Marks, Bulteel, Mills & Co.

Admits that during said war he did take and hold, and now continues to hold, said certificates.

Admits that none of said shares or certificates had been demanded or seized by the Alien Property Custodian of the United States.

Admits that since the outbreak of said war plaintiff has done nothing to diminish its ownership of said shares.

Admits and alleges that Public Trustee insists that he has title to the shares herein involved by reason, among other things, of the Treaty of Berlin and the laws of the United States. Alleges and avers that said Treaty of Berlin defeats plaintiff's title to said shares. Denies that the plaintiff is now the owner of all or any of said shares and alleges that plaintiff has been divested of ownership.

Further answering, the Public Trustee alleges that under the law of the United Kingdom of Great Britain all property belonging to alien enemies was subject to seizure by defendant Public Trustee, to be vested in him by orders of the Board of Trade or the High Court of Justice. That upon such vesting Public Trustee was entitled to the ownership and possession of such property and the right to transfer the same.

That at the outbreak of war and at all times thereafter and now the certificates in question are physically located at London, England, duly endorsed in blank by defendants

Marks, Bulteel, Mills & Co. That said certificates and the shares represented thereby at all times and including the time of seizure hereinafter mentioned constituted property in said Kingdom under and by virtue of the laws thereof. That said plaintiff was an enemy, and that said certificates and the shares represented thereby were duly seized, captured and taken over by Public Trustee by vesting order duly made by the Board of Trade.

That by virtue of such seizure, capture and taking over and the entry of said vesting order and the laws of said United Kingdom of Great Britain and Ireland the Public Trustee became vested with the ownership of said certificates and the shares represented thereby.

The further parts of the answer have to do with the terms of the Treaties of Versailles and of Berlin and the claims of the Trustee thereunder.

In brief, the pleadings leave no substantial issue of fact between the parties but the sole question of law, as to whether Public Trustee by virtue of his actions and the vesting orders of the Board of Trade has capture plaintiff's shares so that their title has been intercepted, and further, whether the Treaties of Versailles and Berlin bear upon this question.

In the second case before the Court, in which the Bank für Handel and Industrie is the appellant, an almost identical question is presented. The pleadings are throughout almost *verbatim* with the pleadings above set forth, except for proper names and one fact which may differentiate this action from the preceding action, viz., in this case the certificates representing the shares (similarly endorsed in blank) owned by the plaintiff were held by London & Liverpool

Bank of Commerce at London "in open running account subject to adjustment" (R., 27).

The Proceedings in the District Court.

These two causes came on to be heard together upon the appearances and pleadings of the respective parties upon the first day of May, 1924. The parties offered and there were received as evidence in the two suits a joint agreed statement of facts (R., 65) and supplemental agreed statement of facts (R., 70). The plaintiff in each suit duly moved for a final decree that the shares of stock in suit belong in full ownership to the plaintiffs in each suit respectively.

Thereupon the defendant Public Trustee duly moved in each suit for a final decree dismissing the bill of complaint therein (R., 56) and adjudging that the certificates and shares of stock, the subject of the suit, are vested in and belong to said defendant, Public Trustee, in full ownership and requiring the defendant United States Steel Corporation to transfer said stock to the defendant Public Trustee upon its books.

Thereupon the defendant United States Steel Corporation duly moved in each suit that the bill be dismissed, and that the claim of the defendant Public Trustee to the shares involved therein be dismissed on the ground that the United States of America had some right, title, or interest to the shares in the suit.

Agreed Statement of Facts and Supplemental Agreed Statement of Facts Presented to the District Court.

The plaintiffs were banking corporations organized and existing under the laws of Germany and were in August,

1914, engaged in dealing with securities, both for their own account and for the account of customers. At the outbreak of war between Germany and Great Britain, the Disconto-Gesellschaft had a branch in London where the certificates for the shares in the first suit were located. That plaintiff owned the shares represented thereby. The Bank für Handel und Industrie had the certificates for the shares in the second action at the London & Liverpool Bank of Commerce "in an open running account of stock bought and sold and of credits and debits because of such sales and purchases and other receipts and disbursements, and subject to the adjustment of such account" (R., 65). That plaintiff owned the shares represented thereby. All these certificates were at the outbreak of war endorsed in blank "that is, the assignment on the back of each certificate was signed by the stockholder of record, being the same person whose name appeared on the face thereof, and the name of the transferee was left blank" (R., 66).

The assignment upon the back of the certificate was as follows (R., 58):

"For value received — hereby sell, assign, and transfer unto — — — shares of the Capital Stock represented by the within Certificate and do hereby irrevocably constitute and appoint — — — Attorney to transfer said stock on the books of the within named Corporation with full power of substitution in the premises.

"Dated — —, 19—.

"— —, — —."

"In presence of — —."

The blank space for the name of the attorney appearing before the words "appoint" and "attorney" was filled in in each instance by the Public Trustee after he seized the certificates (R., 58) for the purpose of obtaining new certificates.

The Bank für Handel und Industrie was indebted to the London & Liverpool Bank of Commerce at the time of seizure of the certificates in open running account, but said London bank held for the plaintiff securities the value of which was largely in excess of such indebtedness (R., 70). But by the order purporting to vest the certificates in suit in Public Trustee the London & Liverpool Bank was authorized to sell and receive the proceeds of sale of sufficient securities to discharge this indebtedness (R., 64), so that this indebtedness in nowise affects the shares in suit, as more fully appears in the answer of the London bank (R., 26), in which the bank sets up no claim or interest against the shares in suit.

It appears from the agreed statement that it was a usual practice in respect of certificates for shares in American corporations that the certificates should remain registered in the name of brokerage firms or nominees. The stockholders of record endorsed the certificates in blank and certificates so endorsed were delivered in fulfillment of sales of the stock. The dividends were collected by the holder of a certificate presenting same to the record stockholder as proof of his right to the dividends. A "Dividend Claimed" stamp was placed on the certificate and the dividend received by the registered owner paid over to the holder of the certificate (R., 68). It is not admitted that this constituted a custom, but rather a practice of convenience (R., 68). Frequently

the ownership of shares passed through many changes without surrender to the issuing company for transfer (R., 68).

The sundry exhibits appearing in the record were submitted to the District Court, together with the agreed statement of facts, and for the most part show the various laws and vesting orders under which the Public Trustee attempts to trace his title.

Under the amendment to the Trading with the Enemy Act of Great Britain, 27th of November, 1914 (R., 77), "Every company incorporated in the United Kingdom and every company which, though not incorporated in the United Kingdom, has a share transfer or share registration office in the United Kingdom shall, within one month after the passing of this Act, by notice in writing communicate to the Custodian" as to shares held by or for the benefit of an enemy.

By the same Act it was provided that the High Court might on application vest the property aforesaid in the Custodian (R., 78), together with power of disposal or to be held to await the orders of His Majesty in Council.

By the same Act it was provided (R., 80) that "No transfer made after the passing of this Act by, or on behalf of, an enemy of any securities shall confer on the transferee any rights or remedies in respect thereof," and "securities" as above used is defined as "any annuities, stocks, shares, debentures or debenture stock issued by or on behalf of the Government or by any municipal or other authority, or by any company or by any other body which are registered or inscribed in any register, branch register, or other book kept in the United Kingdom."

By the Order in Council in force at the conclusion of the Treaty of Versailles the following appears from Section XVI

(R., 102) : that "all property, rights and interests within His Majesty's dominions" belonging to German nationals when the Treaty comes into force and their proceeds are charged in the first place with payment of the amounts due upon claims of British nationals with regard to their property in which they are interested in German territory or debts owing to them by German nationals, and with the payment of compensation awarded by the Mixed Arbitral Tribunal, and further with the payment of claims growing out of the acts of the German Government during the war. Secondly, they are charged with payment of the amounts due in respect of claims by British nationals with regard to their property, rights and interests in the territories of Austria-Hungary, Bulgaria and Turkey. And it is further provided by said Order in Council, Section XVII (*c*) (R., 103),

"where the property charged consists of inscribed or registered stock, shares or other securities, any company, municipal authority or other body by whom the securities were issued or are managed shall, on application being made by the Custodian, notwithstanding any regulation or stipulation of the company or other body, and notwithstanding that the Custodian is not in possession of the certificate, scrip or other documents of title relating to the shares, stocks or securities to which the application relates, enter the Custodian in the books in which the securities are inscribed or registered as the proprietor of the securities subject to the charges and the Custodian shall, subject to the consent of the Board of Trade, have power to sell or otherwise deal with the securities as proprietor of which he is so registered or inscribed, and to require any person having in his possession any documents of title to

any such stock, shares or other securities to deliver the same to him, and an acknowledgment signed by him of such delivery to him, shall be a sufficient discharge to the person delivering the same."

The certificates of the shares in suit in the Disconto action were seized by the Trustee on the basis of a vesting order by the Board of Trade (R., 59). The certificates of the shares in suit in the Bank für Handel action were seized by the Custodian on the basis of a vesting order of the High Court (R., 62). There is no distinction to be made in this connection between the authority of the Board of Trade and of the High Court.

On the foregoing and the other agreements of fact and exhibits appearing in the record of this case judgment was given and decrees entered in both causes (R., 134, 135)—

"That the plaintiff is not the owner of and is not entitled to the shares of stock of the defendant United States Steel Corporation described in the bill of complaint herein; * * * that the defendant, Public Trustee, is the owner of and is entitled to said shares of stock above mentioned and described and is entitled to be registered upon the said books as the holder thereof and to receive the dividends thereon heretofore accrued and unpaid; * * * the defendant United States Steel Corporation be and hereby is directed and required to register upon its books the said Public Trustee as the holder of said shares and to issue to and in the name of the said Public Trustee a new certificate or certificates for said shares in the regular and customary form of certificates of stock usually issued by said United States Steel Corporation and containing no words of limitation or qualification of the ownership of the stock represented

by said certificate or certificates, and to pay to said Public Trustee all dividends thereon heretofore accrued and unpaid."

And from such judgments and decrees these appellants have taken their appeal.

ERRORS RELIED ON.

I. The United States District Court for the Southern District of New York erred in its order, judgment and decree that the Plaintiff was not the owner of the shares of stock of defendant United States Steel Corporation involved in suit.

II. The United States District Court for the Southern District of New York erred in its order, judgment and decree that the Plaintiff was not entitled to be registered upon the books of the defendant United States Steel Corporation as the holders of said shares.

III. The United States District Court for the Southern District of New York erred in its order, judgment and decree that Public Trustee was owner of and entitled to said shares of stock and entitled to be registered upon the books of said United States Steel Corporation as the holder of said shares and to receive the dividends thereon.

IV. The United States District Court for the Southern District of New York erred in its order, judgment and decree that upon surrender of the certificates of the stock in suit by the defendant Public Trustee, the defendant United States Steel Corporation is required to register said Public Trustee as the holder of said shares and to issue new cer-

tificates for said shares to said Public Trustee or his nominee in its regular and customary form.

V. The United States District Court for the Southern District of New York erred in its order, judgment and decree that the plaintiffs' bill be dismissed.

VI. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that defendant Public Trustee was not owner of the shares of stock in suit and not entitled to dividends thereon and not entitled to the issue of new certificates for said shares upon surrender of the certificates thereof in said Trustee's possession.

VII. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that said Public Trustee by seizure in England of the certificates of said stock of the said United States Steel Corporation obtained no right, title or interest in or to the shares represented thereby.

VIII. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that said shares of stock of said United States Steel Corporation and the rights of the owners thereof were property within the United States and protected by the Constitution of the United States and in particular amendment five thereof against seizures except by laws of the United States and of the State of New Jersey under the Constitution of the United States and of the State of New Jersey, and that by seizure of said certificates of said shares said Public Trustee acquired no rights in said shares against plaintiff or said United States Steel Corporation.

IX. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that the shares of stock in suit and the rights of the owners therein were at all times and now are within the United States and subject to the sole jurisdiction thereof, and that said shares were not contemplated within the terms of the treaty of the United States with Germany, known as the Treaty of Berlin, as property "which was on April 6, 1917, in or has since that date come into the possession or under the control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees," and that by said treaty the rights, titles and interests of Plaintiff in and to said shares were confirmed as against the United States and all others.

X. The United States District Court for the Southern District of New York erred in not entering order, judgment and decree that Plaintiff was the owner of and entitled to said shares of stock and entitled to be registered upon the books of the said United States Steel Corporation as the holder and owner thereof and to receive the dividends thereon heretofore accrued.

I.

This case presents a single issue: Whether seizure of certificates in Great Britain constitutes an effective seizure of shares in a New Jersey corporation.

This issue the trustee gives three forms: (1) "By seizure of the certificates I seized the shares themselves; (2) or the rights in the shares; (3) or, if neither, my attempts at seizure are effective because of the general confirmations of the Treaty of Versailles."

But since general terms of confirmation operate only on actual accomplishments, the trustee's contention (3) must have its basis upon contention (1) or (2). Since succession to a "right" can only arise from action by or upon the possessor, the subject-matter or the obligor, the trustee's contention (2) must have its basis upon contention (1)—action upon the shares themselves, the subject-matter—for neither the possessor nor an obligor, in respect to any right in the shares, was within his territorial jurisdiction.

Therefore the trustee's contentions (2) and (3) can stand only if his contention (1) stands. Wherefore this is the sole issue, for our entire case is based on the proposition that a seizure of certificates in Great Britain does not constitute a seizure of the shares of the New Jersey corporation represented thereby.

It is alleged and admitted that at the outbreak of war between Great Britain and Germany the appellants were the owners of the shares involved in this suit, and that they have

since that time taken no action to diminish their ownership thereof (R., 13).

That in itself establishes the appellants' case in chief and throws the burden on the Trustee to show precisely how he intercepted appellants' title and himself acquired title to the shares. The Trustee's brief attempts to show how he has done so, and the function of this brief is to meet his arguments.

This brief is made more complicated for the reason that the Trustee, instead of advancing one definite statement of fact and law upon which he rests his claims, advances three distinct and apparently separate bases of his claims. In the interest of simplicity and clarity, we wish to show, in this foreword, that the apparently distinct bases advanced by the Trustee are built upon a common and single foundation which is itself the sole issue.

This foundation raising the one issue is as to whether or not the seizure of the certificates in London constituted a seizure of the shares themselves. That this is not so, our brief chiefly concerns itself.

In our following argument we have stated, upon the conclusion of our proposition that the certificates do not constitute the shares themselves, that if this Court finds us in error on this point the Court will find no interest in the remaining portions of our brief, since that proposition is the foundation of our case.

But, if this proposition is sound, we believe the Trustee is out of Court, for the common foundation of his three bases of claim has disappeared.

The bases of the Trustee's claims at first appear thus:

First, that by seizure of the certificates the Trustee seized the property of the shares.

Second, that by the seizure of the certificates and the circumstances thereof the Trustee seized rights in the shares, even if he did not seize the shares themselves.

Third, that even if he seized neither the shares nor rights therein, yet, by the treaties of Versailles and Berlin, his attempted seizures have been confirmed.

The very assertion of three separate and distinct bases of his claims is, therefore, peculiar, since if one asserting title bases it upon three propositions, which are in their nature alternative, he himself has no very clear idea of how his alleged title has arisen.

The treaty basis, obviously, cannot stand independent. In so far as treaty terms might be relevant, the Trustee shows merely general terms of confirmation. General words of confirmation cannot give life to a nullity, but at most only establish as unimpeachable those things which have in fact been done. Therefore, whatsoever claims the Trustee asserts as confirmed by treaty must depend upon a showing of something accomplished in the way of seizure of property or rights therein upon his first or second basis. Therefore the treaty question shows itself irrelevant as an independent issue and is merged in the first two propositions advanced by the Trustee.

We further consider that the Trustee's second basis merges in the first for this reason: A right can have no independent existence; a right is not capable of being in itself; it is not a thing which can be seized in itself in any manner.

This Court has pointed out the lack of clear thought which lies in loosely speaking of "rights" as having a *situs* for purposes of levy. In the case of the Chicago Rock Island Co. *vs.* Sturm (174, U. S., 710), this Court had occasion to consider at what place a debt might effectively be levied upon in garnishment. In that case the proposition was advanced that the *situs* of a debt was at the domicile of the creditor. This Court found otherwise and upon the following reasoning:

"The proposition is supported by some cases; it is "opposed by others. Its error proceeds, as we conceive, from confounding debt and credit, rights and remedies. The right of a creditor and the obligation of a debtor are correlative, but different things, and the law in adapting its remedies for or against either must regard that difference. Of this there are many illustrations, and a proper and accurate attention to it avoids misunderstanding." * * *

"The idea of locality of things which may be said to be intangible is somewhat confusing, but if it be kept up the right of the creditor and the obligation of the debtor cannot have the same, unless debtor and creditor live in the same place. But we do not think it necessary to resort to the idea at all or to give it important distinction. The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. To do it you must go to the domicile of his debtor, and can only do it under the laws and procedure in force there. This is a legal necessity, and considerations of *situs* are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. He and he only has something in his hands. That something is the res, and gives character to the

"action as one in the nature of a proceeding *in rem*.
 "Mooney *vs.* Buford & George Mfg. Co. (34 U. S.
 "App., 581), 72 Fed. Rep., 32; Conflict of Laws,
 "see. 549, and notes.

"To ignore this is to give immunity to debts owed
 "to non-resident creditors from attachment by their
 "creditors, and to deny necessary remedies. A debt
 "may be as valuable as tangible things. It is not
 "capable of manual seizure, as they are, but no more
 "than they can it be appropriated by attachment
 "without process and the power to execute the proc-
 "ess. A notice to the debtor must be given, and can
 "only be given and enforced where he is. This, as
 "we have already said, is a necessity and it cannot be
 "evaded by the insistence upon fictions or refine-
 "ments about *situs* or the rights of the creditor. Of
 "course, the debt is the property of the creditor,
 "and because it is, the law seeks to subject it, as it
 "does other property, to the payment of his creditors.
 "If it can be done in any other way than by process
 "against and jurisdiction of his debtor, that way does
 "not occur to us."

Any right imports a relationship of at least two compo-
 nents, (1) the possessor of the right, (2) the person or the
 thing upon which the right may be enforced.

While a right, as such, is a thing incorporeal and not sus-
 ceptible of seizure, it may be effectively dealt with under
municipal law in three manners: (1) By transfer, voluntary
 or involuntary, from its possessor; (2) by action taken
 against the subject-matter itself, if it is tangible; (3) by
 action taken against the person, if any, against whom the
 right may be enforced, to compel him to attorn to the suc-
 cessor to the right in respect of his obligations.

In the case at bar the subject of the rights were shares of stock of the United States Steel Corporation. The obligor in respect of the rights was the Steel Corporation in the State of New Jersey. The possessor of the rights was in Germany. Wherefore the Trustee's contention that he effectively dealt with rights in the shares must be based on the share being within his jurisdiction. This being so, the Trustee's second basis of claim merges into his first, which is left as the sole issue: Did the certificate constitute the share itself for the purpose of seizure?

But, although we feel this case entirely rests upon the single issue as conceived by us, yet, in the interest of complete and square joinder of issue, we will set forth in the following argument our separate and distinct answers to the several propositions advanced by the Trustee as though they were independent propositions. But in so answering his several propositions, we will show that each one of them leads back to this fundamental issue, and we close our discussion of each separate basis alleged by the Trustee by showing that, upon analysis, it only leads back to the single erroneous base upon which it must be founded—that the certificates constituted the shares themselves, which, therefore, were in England for the purpose of seizure.

As we will first show, that cannot be the law.

II.

The very foundation of this case must be examined for its determination; the question of fact and law, whether the shares in suit were at all actually within the territory of England so that jurisdiction might be founded thereon. The basis of jurisdiction is actual power and its existence must be determined by close adhesion to the actual facts.

The question here is not as to where fictions of convenience have, from time to time, thrown shares for purpose of taxation, administration and the like. The proper operation of any fiction is to prevent an injury, or remedy an inconvenience and cannot extend to work an injury by covering inquiry into the true facts when those facts themselves are vital.

But the question is: Where can power be exerted so as to actually, irrevocably and effectively subject all that there is of a share of stock to that power?

The answer is, obviously, where the corporation is and there only. Then that, alone, is where a share is for the purpose of seizure.

It is elementary that jurisdiction of property, separate from its owner, can be acquired and exerted only when, and to the extent, that such property is actually within such territorial jurisdiction;

Pennoyer vs. Neff, 95 U. S., 679 (at 722 *et seq.*);

Boswell vs. Otis, 9 How., 336;

Cooper vs. Reynolds, 10 Wall., 308;

McElmoyle vs. Cohen, 13 Pet., 312;

D'Arcy vs. Ketchum, 11 How., 165;

Thompson vs. Whitman, 18 Wall., 457;

for the foundation of the jurisdiction is the physical ability to seize the thing, the subject of the property, and thus to exercise the will of the jurisdiction upon it.

This Supreme Court, in considering the founding of such jurisdiction as is entitled to full faith and credit as between our own States, recently remarked: "The foundation of jurisdiction is physical *power*, although in civilized times it is not necessary to maintain that power throughout proceedings properly begun * * * great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact."

McDonald *vs.* Maybee, 243 U. S., 90.

This Court has frequently approved the principle: "No fiction shall extend to work an injury; its proper operation being to prevent an injury or remedy an inconvenience."

(Union Refrigerator Transit Co. *vs.* Kentucky, 199 U. S., 194, at 208.)

Whether the statutes of England, or proceedings in England in pursuance thereof, assert or confirm the accomplished seizure of shares is of no import here; the question goes to the fact of the power and jurisdiction of England; whether these shares were, in fact, in England to such a sufficient extent that a seizure of them might be made which could not be, in fact, defeated by any lawful act done within or outside her territory.

Once the Trustee seeks the aid of any legal fiction or of any foreign court to give his asserted capture effect, by so doing he refutes his own contention of complete manuecaption of these shares and admits the incompleteness of his reduction to firm possession.

A seizure of shares of stock, to be effective, must be real and actual as opposed to anything constructive, for so it was held of a seizure by a United States marshal acting under statutes of the United States in time of war. This Supreme Court said in *Miller vs. United States*, 11 Wall. 268:

"The first (error assigned) is, that there was no such seizure of the stock as gave the court jurisdiction to condemn them if forfeited. This was a fatal error if the facts were as claimed. * * * Unless taken into actual possession by an officer of the court, it might be eloigned before a decree of condemnation could be made, and thus the decree would be ineffectual. It might come into the possession of another court and thus there might arise a conflict of jurisdiction and decision, if actual seizure and retention of possession were not necessary to confer jurisdiction."

In *Phoenix Bank vs. Risley*, 111 U. S., 125, this Court held:

"Where the seizure is a *sine qua non* to the jurisdiction of the court, and where, as in the present case, actual manucaption is impossible, the evidence which supports a constructive seizure should be scrutinized closely, and be of a character as satisfactory as that which would subject the party holding the fund or owing the debt, which is the object of the proceedings, to an ordinary civil suit in the same court."

And in *Chase vs. Wetzlar*, 225 U. S., 79, involving jurisdiction of our Federal courts under the Act of March 3, 1875, section 8, this Court discards fiction as an element to found jurisdiction, saying:

"The power conferred rests upon a real, not an imaginary base. * * * This being true we are of the opinion that a Federal Court has not jurisdiction over a person not within its territorial jurisdiction, or over property in the custody of such person, not within such territorial jurisdiction, merely because a state court may, as to such person and such property, because of some proceeding pending before it, have the authority to treat both the persons and property as constructively present and within its jurisdiction."

This principle was again set forth in *Crichton vs. Wingfield*, 258 U. S., 66.

Our first task, therefore, is to find where a share of the United States Steel Corporation is to be found in a real and actual sense. Since a share of stock is intangible, incorporeal (*Miller vs. Kaliwerke*, 283 Fed., 746), and in the nature of a chose in action (*Jellenik vs. Huron Copper Co.*, 177 U. S., 1), it is fundamentally incapable of manucaption. Thus have our courts held at common law and in the absence of statute enabling manucaption. Yet it is clear that in the absence of statute one in position to compel the issuing corporation may, by compulsion, derive all the fruits of any particular shareholder's rights, and neither the shareholder nor any other not having power to compel the corporation can oust from that position of advantage. Therefore it seems further clear that it is only at the corporate domicile that a seizure of a share, in any sense real and actual, can be made.

Thus the Supreme Court has ruled that in the absence of a particular statute available to an officer whereby he may make manucaption of an intangible, he may still bring the

intangible into the jurisdiction of the court in one manner—by service upon the obligor; by attaching the interest; by service on the corporation (*Alexander vs. Fairfax*, 95 U. S., 774). Such mode of seizure necessitates jurisdiction of the corporation. Of course, it is not available to the English Trustee against a New Jersey corporation.

In the enactment of statutes defining qualities of shares and where they may be found for purpose of levy the State of New Jersey, and most, but not all, of our other States have followed and not departed from this rule of common sense, that shares exist for purpose of levy and seizure at the *corporate domicile* and only there. The rulings of this Court, the several Federal courts, and of the State of New Jersey have consistently followed this rule, as more fully shown in the next section of this brief.

It is true that the fiction "*mobilia sequuntur personam*" may, in the interest of convenience, tend to lift such a share elsewhere for the purpose of administration or taxation. But as this Court has found that the modern application of this fiction is extended for such purposes only, and as no party to this proceeding contends for the propriety of its application here, we need comment no further upon it.

III.

Shares similar to those in suit have such existence at the corporate domicile as to found jurisdiction in rem, and may be levied upon, attached, and garnished by service on the corporation, although the certificate, its holder, and its owner be outside the jurisdiction.

In 1899 this Supreme Court decided the case of *Jellenik vs. Huron Copper Mining Company*, 177 U. S., 1. A bill had been filed in Michigan to remove a cloud on title to shares of the Mining Company, a Michigan corporation. The company was made a party and served, but the holders of the certificates were not within the district and were served by publication only. The company pleaded to the jurisdiction in that the respondents, the certificate holders, had not been served. The Court sustained this plea and the matter came here on appeal. This Court held:

“* * * by the law of Michigan the shares of “stock in the defendant company are to be deemed “personal property, transferable on the books of the “company; and that the share or interest of a stock- “holder may be taken in execution or reached by at- “tachment, a copy of the execution or attachment “being left by the officer with the clerk, treasurer or “cashier of the company. The authority of the State “to establish such regulations in reference to the stock “of a corporation organized and existing under its “laws cannot be doubted. We need not discuss, in “the light of the authorities, whether the shares of “stock in the defendant company may not be accu- “rately described as chattels, or choses in action, or “property in the nature of choses in action. Chief

"Justice Shaw, in *Hutchins vs. State Bank*, 12 Met.,
 "421, said: 'If a share in a bank is not a chose in
 "action, it is in the nature of a chose in action, and
 "what is more to the purpose, it is personal property.'
 "The Court of Appeals of New York, speaking by
 "Judge Comstock, held certificates of stock to be
 "simply muniments and evidence of the holder's title
 "to a certain number of shares in the property and
 "franchises of the corporation of which he is a mem-
 "ber. *Mechanics' Bank vs. New York & N. H. R.*
 "*Co.*, 13 N. Y., 627; Angell and Ames on Corpora-
 "tions, par. 560. It is sufficient for this case to say
 "that the State under whose laws the company came
 "into existence has declared, as it lawfully might, that
 "such stock is to be deemed personal property. That
 "is a rule which the Circuit Court of the United
 "States sitting in Michigan should enforce as part of
 "the law of the State in respect of corporations created
 "by it. The stock held by the defendants residing
 "outside of Michigan who refused to submit them-
 "selves to the jurisdiction of the Circuit Court being
 "regarded as personal property, the Act of 1875 must
 "be held to embrace the present case, if the stock in
 "question is 'within the district' in which the suit was
 "brought. Whether the stock is in Michigan so as
 "to authorize that State to subject it to taxation as
 "against individual shareholders domiciled in another
 "State is a question not presented in this cause, and
 "we express no opinion upon it. But we are of
 "opinion that it is within Michigan for the purposes
 "of a suit brought there against the company—such
 "shareholders being made parties to the suit—to de-
 "termine whether the stock is rightfully held by them.
 "*The certificates are only evidence of the ownership*
 "*of the shares, and the interest represented by the*
 "*shares is held by the company for the benefit of the*
 "*true owner. As the habitation or domicile of the*

"company is and must be in the State that created it, the property represented by its certificates of stock may be deemed to be held by the company within the State whose creature it is, whenever it is sought by suit to determine who is its real owner." (All italics in this brief ours.)

This Court in the foregoing case referred to the qualities of the shares of stock involved with reference to the qualities given them by the statutes of Michigan. The statutes of New Jersey and the decisions of the courts of New Jersey govern in respect of the qualities of the shares in the case at bar. Since this is so, we state that for all purposes considered here the statutory qualities of the New Jersey shares are identical with those of a Michigan share. (*Hudson Navigation Company vs. Murray*, 223 Fed., 466, at 68.)*

It seems desirable to note, at this point, that the "Uniform Stock Transfer Act" was enacted in New Jersey in 1916. (Chapter 191, laws of New Jersey, 1916.) This Act, how-

*"It was held by the Supreme Court in the case of *Jellenik vs. Huron Copper Mining Company* that a suit for the purpose of removing a cloud upon the plaintiff's title to shares of stock of a Michigan Corporation * * * could be maintained in the district of the State where the corporation was created * * *.

The statutes of Michigan, quoted in the opinion of the Supreme Court, providing for the incorporation of companies such as that by which the stock was issued, are in all material respects the same as the New Jersey Corporation Act under which the plaintiff in this case was incorporated. *Amparo Mining Company vs. Fidelity Trust Co.*, 75 N. J. Eq., 555, 557; 73 Atl., 249; 2 N. J. Comp. Stat., p. 1592 *et seq.*, and page 2244. The State courts of New Jersey have also uniformly held that shares of stock in a New Jersey corporation, held by and claimed to belong to a resident of another State, who must be brought in by a substituted service, have such a *situs* in New Jersey as to confer upon its courts jurisdiction to determine questions regarding the title to the stock; that such a proceeding is *quasi in rem*.

ever, has no bearing on the case at bar for three reasons. Firstly, the Act by its terms applies to certificates issued since its enactment, and those in suit were issued prior thereto. Secondly, the protective provisions of the Act apply only to holders in due course for value without notice, a position to which the appellee Public Trustee cannot even pretend, and, in fact, does not. Thirdly, it has been held by the Federal courts that passage of the "Uniform Stock Transfer Act" in its usual form does not alter the rule in the Jellenik case. (*Harvey vs. Harvey*, 290 Fed., 653; *Columbia Brewing Co. vs. Miller*, 281 Fed., 289.)

The Jellenik decision has been cited in and established a firm line of Federal and New Jersey decisions, among others:

Schultz vs. Diehl, 217 U. S., 594; 54 Fed., 896.

Ashley vs. Quintard, 90 Fed., 84.

Einstein vs. Georgia Southern Rwy. Co., 120 Fed., 1008.

Gundry vs. Reakirt, 173 Fed., 167.

Shaw vs. Goebel Brewing Company, 202 Fed., 408.

Gideon vs. Representative Securities Corporation, 232 Fed., 185.

Harvey vs. Harvey, 290 Fed., 653.

Andrews vs. Guayaquil Ry., 69 N. J. Eq., 211; (affirmed) 71 N. J. Eq., 768.

Sohege vs. Singer Mfg. Co., 73 N. J. Eq., 567.

Amparo Mining Co. vs. Fidelity Trust Co., 75 N. J. Eq., 555.

Amparo Mining Company *vs.* Fidelity Trust Co., *supra* (err. & app. affirming, *id.*, 74 N. J. Eq., 197; 71 Atl., 605 (Ct. Chan.); *Andrews vs. Guayaquil & Quito Ry. Co.*, 69 N. J. Eq., 211; 60 Atl., 568 (Ct. Chan.); affirmed 71 N. J. Eq., 768; 71 Atl., 1133 (err. & app.); *Sohege vs. Singer Mfg. Co.*, 73 N. J. Eq., 567; 68 Atl., 64."

The Jellenik decision has been applied and strictly followed by the Federal courts in determining the validity of the seizure of shares of stock by the Alien Property Custodian of the United States under the provisions of the Trading with the Enemy Act. Section 7 (c) of the Trading with the Enemy Act, as amended on November 4, 1918 (40 Stat. L., 1020), provided that the Custodian might seize shares of stock by serving a demand upon the issuing corporation that it cancel its outstanding certificates representing such shares and issue new certificates to the Custodian. In the following three cases upholding the constitutionality and effectiveness of a seizure so made, the Jellenik case was applied as finding *situs* of the shares for purpose of seizure.

Columbia Brewing Co. vs. Miller, 281 Fed., 289.

Miller vs. Kaliwerke, etc., 283 Fed., 746.

Garvan vs. Marconi Wireless Co., 275 Fed., 486.

Of these decisions *Miller vs. Kaliwerke* is of the utmost interest here. It furnishes the closest analogy to the case at bar which it is possible to find. In that case the English Public Trustee, the plaintiff in the case at bar, intervened in an action brought by our Alien Property Custodian against the International Agricultural Corporation. Our Alien Property Custodian had demanded and seized certain voting-trust certificates of this company on its books and brought the action to compel recognition of such seizure by the company and the issuance of new certificates. The Public Trustee based his right to intervene on the fact that, prior to the entry of the United States into the war, he had made seizure of the shares by seizure of the voting-trust certificates assigned in blank in England, whereby he had become vested with the

ownership of the shares. The Court determined that there was no distinction to be made between the voting-trust certificates involved and an ordinary stock certificate.

In view of the particularly close analogy, we set forth the following considerable extracts from the opinion rendered by the Circuit Court of Appeals, Second Circuit:

“ * * * The International Agricultural Corporation, which issued the stock certificates, we have seen, is a New York Corporation, and as such is ordinarily subject to the laws of the state of New York. * * *

“ * * * In *Miller vs. United States*, 11 Wall. 268, 20 L. Ed., 135, decided at the December term, 1870, the Supreme Court sustained the right of the government to confiscate stocks in a railroad corporation, which stock was alleged to belong to one Miller, a citizen of Virginia, who held various offices under the government of Confederate States. * * *

“ * * * The seizure of stock consisted in a notice given by the United States marshal to the president of one of the companies and to the vice president of the other that he seized the stock. The certificates of stock were not seized and were presumed to be in the possession of the owner of the stock. * * *

“ * * * In two of the proceedings now before the Court, being No. 326 and No. 328, the British Public Trustee, acting as Custodian of enemy property in Great Britain, pursuant to certain acts of the Parliament of the United Kingdom of Great Britain and Ireland, filed claims and interposed answers, in which he alleged his seizure of the voting trust certificates *assigned in blank and the vesting of the property in him by vesting orders made*

"by the Board of Trade, a department of the British government, prior to any of the demands made by the Alien Property Custodian; that by virtue of such seizure he became vested with the ownership of said voting trust certificates and with the beneficial interest in the stock of said International Agricultural Corporation. * * * as if the said voting trust certificates had been then and there duly conveyed and transferred to him by the alleged enemy involved. * * *

* * * It is granted that the Public Trustee represents the sovereignty of the British nation as respects property which he claims under the acts of Parliament conferring upon him rights in alien property found within the United Kingdom. But if he undertakes to assert those rights in the courts of the United States, he certainly must proceed in accordance with the laws of the United States. * * *

* * * But it always has been the law that if a person, so exempt from process, sues in any court of the United States, he must proceed in the regular way and in accordance with the laws of the jurisdiction invoked. The principle is equally applicable to the British Public Trustee. * * *

* * * It may be observed that, shares of stock being intangible, incorporeal, personal property, their situs for purposes of seizure is in the state which creates the corporation and where it resides. The situs of the shares involved in these proceedings was in the Southern District of New York, that being the residence of the corporation which issued them. A share of stock and the certificate of the share are two very different matters. The certificate of stock is not the stock itself, but mere evi-

"dence of the stockholder's interest in the corpora-
 "tion. *A seizure of the certificate, which may be in*
 "*one state or country, is not a seizure of the stock,*
 "*the situs of which may be another. That the situs*
 "*of the stock is at the domicile of the corporation,*
 "*and that it makes no difference that the certificate*
 "*of the stock may physically be elsewhere, is the*
 "*rule in the federal courts. See Jellenik vs. Huron*
 "*Copper Mining Company, 177 U. S., 1. * * **
 "** * ** In the proceedings under review the
 "demand, and therefore the seizure of the stock, hav-
 "ing been made within the Southern District of New
 "York, which was the domicile of the corporation as
 "well as domicile of the voting trustees, was an effec-
 "tive seizure of the stock, and *it is quite immaterial,*
 "*so far as the mere fact of seizure is concerned,*
 "*whether the certificates were or were not in the pos-*
 "*session of the British Public Trustee. * * **"

It is to be noted that an appeal from the foregoing decision
 lay, of right, to this Court, and no appeal was taken by the
 Public Trustee. The Trustee, to be sure, contends that the
 decision in the Kaliwerke case did not purport to determine
 title to the shares involved, but only the right of possession.
 We differ with that view of the case, for, while it is true that
 the Court held that the Public Trustee might *assert* his
 claims of title under Section 9 of the Trading with the En-
 emy Act, yet the whole basis and wording of the opinion
 clearly indicate that, if such alleged rights were so asserted,
 title would be determined against the Public Trustee. In
 this view, it is significant that, although nearly three years
 have elapsed since that decision, the Public Trustee has not
 deemed it desirable to file any such suit for the further de-
 termination of title.

One conclusion established by that case, and the one immediately applicable at this point of our discussion, cannot be avoided; that, whether or not it leaves open the question as to possible *rights* acquired by the Trustee by virtue of his seizure of certificates, the ruling is most square that he did *not seize the property of the shares*.

IV.

The test of jurisdiction in rem over shares of stock is the power of effective control. This necessarily includes power over the corporation itself to enforce a complete and effective transfer in form and in fact of such shares in accordance with the judgment of the sovereign unaided by any other sovereign. Shares, therefore, cannot be captured except at some domicile of the corporation where such transfer can be enforced. The presence of endorsed certificates beyond such domicile is not enough.

Baker vs. Baker, 242 U. S., 394:

The federal question there involved was whether the Court of Appeals of Kentucky had given due faith and credit to a decree of the Chancery Court of Hardin County, Tennessee, in an action there brought by the widow and executrix of one Baker against Baker's mother to remove a cloud from the title to 270 shares of stock of a Kentucky corporation, the certificates for which plaintiff held and could endorse, service having been had by publication only, and the decree having found the plaintiff individually to be the sole distributee and owner of the stock and entitled to new certificates.

The widow then sought by action in Kentucky to enforce the Tennessee judgment and compel the issuance of new certificates to her. The corporation and the mother of the plaintiff's deceased husband, who claimed an interest in the stock, being made parties defendant, denied the validity of the Ten-

nessee judgment as entered without due process and not entitled to credit. The Tennessee court had general jurisdiction of the subject-matter and its proceedings had been in conformity with the statutes of that State. The question turned exclusively upon the *situs* of the shares. If they were in Tennessee, where plaintiff as her husband's executrix held the certificates, the Tennessee court had jurisdiction *in rem* and its judgment was good, otherwise it was bad. It was held that the Tennessee judgment had no effect *in rem* upon the stock of the Kentucky corporation and was not entitled to faith and credit in Kentucky, and that it was void. The opinion of the Court in part is as follows:

"* * * We have no concern with the effect of
 "the Tennessee judgments upon the distribution of
 "so much of decedent's personalty as was situate
 "within that state. The present action affects only
 "the ownership of shares of stock in a Kentucky cor-
 "poration having no situs outside of its own state, so
 "far as appears, and a claim of indebtedness against
 "the same corporation. For the purpose of founding
 "administration, it is commonly held that simple con-
 "tract debts are assets at the domicile of the debtor,
 "even where a bill of exchange or promissory note
 "has been given as evidence. *Wyman vs. Halstead*
 "(*Wyman vs. United States*), 109 U. S., 654, 656,
 "27 L. Ed., 1068, 1069, 3 Sup. Ct. Rep., 417. The
 "State of the debtor's domicile may impose a succes-
 "sion tax. *Blackstone vs. Miller*, 188 U. S., 189, 205,
 "47 L. Ed., 439, 444, 23 Sup. Ct. Rep., 277. It is
 "equally clear that the state which has created a cor-
 "poration has such control over the transfer of its
 "shares of stock that it may administer upon the
 "shares of a deceased owner and tax the succes-
 "sion. * * *

"* * * All of which goes to show, what plaintiff in error in effect acknowledged when she brought her present action in a Kentucky court, that the Tennessee judgments had no effect in *rem* upon the Kentucky assets now in controversy. She invokes the aid of those judgments as judgments in *personam*. But it is now too well settled to be open to further dispute that the 'full faith and credit' clause and the act of Congress passed pursuant to it do not entitle a judgment in *personam* to extraterritorial effect if it be made to appear that it was rendered without jurisdiction over the person sought to be bound."

We submit, therefore, that the learned judge who decided this case below fell into error in holding with regard to their *situs* that "the shares are identified with the certificates," and also in holding that they have a *situs* both at the domicile of the corporation and at the place where the certificates happen to be.

We refer also to the learned and exhaustive treatment of the question of the *situs* of shares for the purpose of action in *rem* in the opinion of Judge Hammond in *Ashley vs. Quintard*, 90 Fed., 84 (1898), from whom we quote:

"* * * I am convinced that the soundest principles of public policy, private justice, and international or interstate comity and obligation require that shares of stock shall be subjected, in invitum, as against an owner not served with process personally, only in the state which created the stock, and regulates its incidents by its own laws and has the sole right to declare how and under what circumstances it shall be liable to judicial process operating alone upon the stock and not upon the owner."

(a)

**The English Cases and Writers upon International Law
Sustain This View.**

Dicey, in his Digest of the Law of England, with reference to the conflict of laws says:

"The foundation of an action *in rem*—using the words in their widest sense—is the power to deal with or dispose of the property, the title to which, or the possession whereof, is in question. If the sovereign of a country has in fact the power to transfer the ownership or possession of property the judgment of his courts in regard to such property is decisive in regard to the right to such property" (p. 413).

He further says that an effective judgment means a decree which confers an actual and not merely a nominal right, "that is, a right which, if aided by the sovereign whose Court has delivered the judgment, he can enforce" (40). That a judgment which he cannot, even if aided by the sovereign under whose authority the judgment is delivered, actually and in fact enforce, is ineffective. This, he says, may be called "the principle of effectiveness, or from another point of view the test or criterion of effectiveness," and that in such actions jurisdiction depends primarily upon the *res* being within control of the court or *in strictness* within the control of the sovereign.

We call particular attention to *The Attorney General vs. The New York Breweries Co.*, 1 Q. B. (1898), 205, decided by the Court of Appeal, where it was held that the shares of an

American decedent in an English corporation which conducted all of its business in New York, were assets in England because they were incapable of being effectually transferred without the doing of some act in that country. "This would include shares and debentures of a limited company incorporated in England, *transfers or transmission of which must, as in the present case, be completed by entries made in this country in a register of members or a register of debenture holders.*" (Our italics.) The Court also dwelt upon the fact that dividends when declared were debts payable at the domicile of the corporation. This case constitutes a definite application of the test of effective control applied to corporate shares resulting in the establishment of their *situs* at the corporate domicile regardless of the whereabouts of certificates.

The leading English case, and that which has been cited by the counsel for the Trustee, is Attorney General *vs.* Bouwens, 4 Meeson & Welsby, 171-191 (1838), in which it was held that Russian, Danish, and Dutch bonds *payable to bearer* situate in England, and with regard to which it was expressly found that "it never has been necessary to do any act *whatsoever* out of the Kingdom of England in order to make the transfer of any of said bonds valid" (190)—were assets subject to probate duty there. It was said that judgment debts are where the judgment is recorded, land where the land lies, specialty debts where the instrument happens to be and simple contract debts where the debtor resides, and that the last includes bills and notes. But the Court distinguished what we take to be registered bonds, Lord Abinger saying:

"The two cases last above cited decided that French
"rentes and American stock, which are part of the

“national debt of France and America, respectively,
 “*and are transferable there only*, and debts due from
 “persons in America, were not assets locally situated
 “here. But it is contended, and we think rightly,
 “that the property which is the subject of this inquiry
 “is distinguishable, and had a locality in England.”

In *Stern vs. The Queen*, 1 Q. B. (1896), 211, strongly relied on by our opponents, while holding that a certificate of American railroad stock of an English decedent endorsed in blank was liable to probate duty, it was said:

“It being a marketable security, operative, *though*
 “*not completely operative*, to pass the title and hav-
 “ing a marketable value here, I think that it is itself
 “a document which is a document of value in the
 “hands of the executors.” (Our italics.)

Under that case our opponents can take nothing. Indeed, they must lose because the seizure of a document not completely operative to pass title will not satisfy the criterion of effectiveness.

In *Winans vs. The King*, 1 K. B., 1908, 1022, it was held that American bearer bonds were subject to estate duty in England, Buckley, L. J., saying that a debt under seal or specialty has a species of corporeal existence, by which its locality might be reduced to a certainty, being of a higher nature than a contract debt, and that these bonds were all payable to bearer and *no act was necessary out of the kingdom to render the transfer of them valid*. The last phrase gives complete effect to the doctrine for which we contend.

Most recent is the case of *New York Life Insurance Co. vs. Public Trustee*, 40 Times L. R., 430, Court of Appeal, March

6, 1924, holding that policies of life insurance payable by their terms at the branch office of the company in London were assets there subject to seizure because the corporation had thereby localized the debt at London, where it could be collected by suit. This also is entirely consistent with the doctrine of effectiveness.

In the recent American case of *Cassidy vs. Ellahorst*, 110 O. S., 405 (1924), it was held upon careful consideration that stocks of foreign corporations of which certificates were found in Ohio in the box of a non-resident decedent were mere title deeds, not enforceable in Ohio and not assets subject to inheritance taxation there.

(b)

**That the Certificates Were Endorsed Does Not Alter
the Case.**

In the opinion of the court below it is the holding that under English law the endorsement of the certificates gave the Trustee authority to insert his name, and thereby become the complete holder of the title. For this the court below relies upon *Colonial Bank vs. Hepworth*, L. R. 36, Ch. Div. 36, 53, 54. We submit, with respect, that the Court erred, and that the case cited leads to the contrary conclusion, and that if the present case is decided in accordance with that case the plaintiff here must prevail.

That case had to do with certificates, endorsed in blank, bought by brokers for a client, wrongfully pledged to a bank, redelivered by it to the brokers to be transferred to the name of the bank, but by them transferred to the name of their

original client for whom the shares were bought and delivered to him. The contest was between the client and the bank, which claimed he was estopped by the blank endorsement of the certificates which his brokers had delivered to it. In the opinion of the Court it was said, at page 44:

"The holders" (on whom authority to fill in the name of the transferee is conferred) "must, of course, *be bona fide holders for value* without notice."

And, at page 53:

"Having regard to the practice proved and the condition in which these documents are when they pass from hand to hand, the right principle to adopt with reference to them is to hold where (as is the case before me) the transfers are duly signed by the registered holders of the shares, each prior holder confers upon *the bona fide holder for value* of the certificates for the time being an authority to fill in the name of the transferee and is estopped from denying such authority, and to this extent and in this manner, but not further, is estopped from denying the title of such holder for the time being. *By delivery an inchoate legal title passes, but a title by unregistered transfer is not equivalent to what has been termed 'the legal estate' in the shares or to the complete dominion over them.*"

The judgment was against the bank. This case proves:

- (1) That the Public Trustee (who is, of course, not a *bona fide* holder for value) can claim nothing by estoppel on account of the blank endorsement.
- (2) That the most he obtained by the seizure was less than "the legal estate in the shares" and was not "complete dominion over them."

Inasmuch as complete dominion is essential to effective seizure, the application of the foregoing authority should necessarily have resulted in the failure of the Public Trustee.

(c)

**Yazoo and Mississippi Railroad vs. Clarksdale, 257
U. S., 10, Presented No Question of the Situs of
Shares.**

Our opponents and the court below have relied upon the above case as establishing the proposition that "the shares are identified with the certificates." We submit that the case by no means goes so far. It had to do merely with the question of the procedure required by the then existing statute of Mississippi to make levy within that State upon the stock of a Mississippi corporation. It was purely a matter of statutory interpretation upon a procedural question. No controversy of substantive law, or of conflict of laws, or of jurisdiction *in rem* over the shares of a foreign corporation, or as to the *situs* of shares, was there involved. As we view the case, it was this:

The law of Mississippi made stock of corporations of that State subject to levy on execution, and further made it the duty of the custodian of the corporate books to give to the sheriff executing the writ a certificate stating the number of shares held by the judgment debtor and enacted that the purchaser of such shares should be the owner thereof as if issued to him. It was held that an ordinary outstanding certificate showing the number of shares satisfied this statute, and that the marshal's levy thereon was a good levy within its terms.

Within the State the manner of levy upon shares of domestic corporations is, we not only admit, but contend, purely statutory, and while the usual manner is to give notice to the corporation, it seems in one other State at least to still be optional to seize the shares either by the certificates or upon the books. *Parker vs. Sun Ins. Co.*, 42 Louis. Ann. 1172. This in no way trenches upon the doctrine of effective control as applied to such shares, because the corporation is within the jurisdiction and the sovereign can by appropriate process put the purchaser at the sheriff's sale in full and complete possession and compel issuance of new documents of title to him and the registration of his name upon the books. Therefore we submit that the above case does not conflict with the application of the doctrine of effective control for which we contend.

(d)

The Weight of American Authority is That Foreign Attachment Does Not Lie Against Shares of a Non-resident Corporation Merely by the Seizure of the Certificates.

We submit that *Baker vs. Baker* rules this point. But, as the Court below relied upon *Simpson vs. Jersey City Contracting Co.*, we shall endeavor to show that the application made of that case is contrary not only to the *Baker* case, but to the great weight of other American authority as well.

Christmas vs. Biddle, 13 Pa. St., 233 (1850):

A certificate of stock in a bank, in another state, sent to an individual in Pennsylvania with authority to sell it at a limited price was held not subject to foreign attachment.

The opinion is concise and to the point. The Supreme Court of the state said that the thing to be attached must be in the power of the Court; that you might as well attempt personal jurisdiction over a non-resident as to attach his stock in a Mississippi bank, where it is transferable on its books only in person or by power of attorney; that it is like a title deed to lands, and that bank stock is subject to attachment by our laws but "it is bank stock of our own State, subject to our own laws and transferable by a judicial sale under them, and not British or French bank stock or the bank stock of any other state."

In *Winslow vs. Fletcher*, 53 Conn., 391 (1885), it was held that stock of a foreign corporation the certificates of which were in the hands of a local pledgee, could not be attached because not within the jurisdiction. The Court further found that the owner's equity of redemption or the obligation to reconvey the stock upon payment of the debt was not of such a nature as to be subject to garnishee process. The same holding upon like circumstances was made in *Tweedy vs. Bogart*, 56 Conn. 419 (1888). In New Jersey *Sheep & Wool Co. vs. Traders Bank*, 104 Ky. 90, an attempt to attach stock of a foreign corporation by service on the resident agent was held not good. The same was held in *Gundry vs. Reakirt*, 173 Fed. 167, C. C. E. D. Pa. (1908). In *Pinney vs. Neville*, 86 Fed. 97, C. C. Mass. (1898), it was ruled by Judge Colt that an attachment of certificates of stock of a foreign corporation was not good; that there was no law of Massachusetts authorizing it, and that the general law was that shares of stock in a foreign corporation owned by a non-resident were not subject to attachment. The same conclusion was reached in Missouri in a

carefully considered opinion by its highest court. *Armour Brothers Banking Co. vs. St. Louis National Bank*, 113 Mo. 12, and reaffirmed in *Richardson vs. Bush*, 198 Mo. 174 (1906), upon the *Jellenick* case and *Christmas vs. Biddle* (182). In *Ireland vs. Globe Milling Co.*, 19 R. I. 180 (1895), the Court held that the stock of a non-resident in a foreign corporation was not attachable; that the *situs* of the stock was at the corporate domicile only; that the stock was not in the State, and the attachment was a nullity. In *Maertens vs. Scott*, 33 R. I. 356 (1911), the same question was again before the Court. In that instance, there had been an attempted attachment of the stock of a non-resident in a foreign corporation, certificates for which had been deposited within the jurisdiction under a reorganization agreement. In the opinion of Associate Justice Sweetland, in which the majority concurred, it is stated:

"The great weight of authority supports the conclusion of the Superior Court, that shares or certificates of stock in a foreign corporation are not subject to attachment outside the jurisdiction where the corporation was created and exists" (384-5).

The same conclusion was reached in *Daniel vs. Gold Hill Mining Co.*, 28 Wash., 411 (1902), as well as in *Reid Ice Cream Co. vs. Stephens*, 62 Ill. App., 334, and in an excellently considered opinion in *Smith vs. Downey*, 8 Ind. App., 179 (1893).

(c)

Cases in Which the Stock of "Localized" Foreign Corporations Has Been Held Subject to Attachment.

Chief or these cases is *Young vs. South Tredegar Iron Co.*, 85 Tenn., 189 (1886), in which the opinion was written by

Judge, afterwards Mr. Justice Lurton, There an attachment was laid against the stock of a foreign corporation localized in Tennessee under laws which made a company doing business within its borders practically a domestic corporation. The Court fully recognized that the *situs* of the stock was that of the corporation, but held that the company had in effect become a Tennessee corporation, and therefore its stock was subject to attachment within the jurisdiction. In the opinion of the Court the judge said: "*Hence the locality of the paper certificates, or their actual seizure, is unimportant.*" This case is in complete harmony with the doctrine of effective control for which we contend, and the distinction which we point out has often been recognized. *Armour Brothers Banking Co. vs. St. Louis National Bank*, *Daniel vs. Gold Hill Mining Co.*, and *Smith vs. Downey, supra*. *Bowman vs. Brefogle*, 145 Ky., 443, in its facts and conclusion is similar to *Young vs. South Tredegar Iron Co.*, which it follows.

(f)

Cases in Which Certificates of "Pledged" Stock Have Been Held Subject to Foreign Attachment.

The leading case of this line is *Simpson vs. Jersey City Contracting Co.*, 165 N. Y. 193 (1900). The stock was pledged to a local bank which held the certificates. A writ of attachment or garnishment served upon the bank was held sufficient to bind the residuary interest or equity of redemption of the pledgor, who was a non-resident. It was said that the pledgor's residuary interest in the pledge becomes a demand which might be the subject of attachment (garnish-

ment). The levy apparently was not upon the certificates themselves (203). The sheriff did not take possession, but simply served the writ as a seizure of the defendant's claim or demand against the pledgee for what might be coming to him when the pledge should be satisfied. The Court of Appeals of New York has recently looked askance at this case, for in *Holmes vs. Camp*, 219 N. Y. 359, 368 (1916), it cited upon the question of the *situs* of stock many of the authorities upon which we now rely, viz., *Winslow vs. Fletcher*, *Ireland vs. Globe Milling Co.*, *Pinney vs. Neville*, *Ashley vs. Quintard*, *Armour Bros. Banking Co. vs. St. Louis National Bank*, and *Smith vs. Downey*, and in distinguishing the *Simpson* case took occasion to remark that it had been decided by divided court and was in conflict with some of the cases cited. *Puget Sound vs. Mather*, 60 Minn. 362, is similar in point of facts and result to the *Simpson* case.

In *Merritt vs. American Steel Barge Co.*, 79 Fed. 228 (C. C. A. 8), it was held that foreign stock, when held in pledge within the State, was subject to the jurisdiction of the courts of that State *to establish and foreclose the lien under which it was held*, and to make a good sale of the stock. To like effect is *Beal vs. Carpenter*, 235 Fed. 273, C. C. A. (1916), and *Blake vs. Foreman Brothers Banking Co.*, 218 Fed. 264, D. C. N. D. Ill. (1914).

These cases seem to be easily distinguishable (certainly from the instant case of the *Disconto Gesellschaft*) for the following reason: The pledge (or, perhaps more properly, hypothecation) of stock vests in the pledgee a special property. He is a *bona fide* purchaser, may recover possession from a third person, and may sue for an injury to the stock.

The equitable title passes to him by delivery of endorsed certificates. He has the right to collect dividends. Although he holds the stock in pledge, the certificates become his own. He may surrender them to the corporation and transfer the stock to his own name and receive new certificates. He is not bound (as this Court has several times held) to return to the pledgor the same certificates. *Richardson vs. Shaw*, 209 U. S., 365; *German vs. Littlefield*, 229 U. S., 19; *Dull vs. Hollins*, 241 U. S., 523. In short, he becomes the stockholder, and when a writ of garnishment is served upon him he is compelled to disclose the possession, not merely of certificates, but of his debtor's actual stock in his possession and a contingent obligation to return the pledge or surplus to the pledgor upon satisfaction of the debt. This special property of the pledgee, either as to the surplus or equity of redemption, has been held (as well as denied) to be the subject of foreign attachment. All decisions of Federal courts or of State courts of last resort cited by our opponents upon the subject of foreign attachment will, we think, be found to be of this nature. The *Simpson* case itself recognizes this distinction, pages 196, 197.

While there is in some of them language that goes further and apparently would sustain our opponents, the underlying fact that the Court was dealing in these cases not with the mere certificates, but with shares held by a party residing in the jurisdiction who had been actually subjected to the process of the Court; with a debt, to account for a balance, at the domicile of the pledgee, who in this aspect becomes the debtor; with an equity of redemption, that is to say, a trust to account for the balance at the domicile of the trustee. We submit therefore that these cases do not, as

contended by our opponents and as held by the learned judge below, sustain the proposition that "the shares are identified with the certificates," but that they are, in effect, examples of the exercise of jurisdiction in personam upon the garnishee who has, as above stated, not only the muni-ment, but an actual title to the shares themselves, as well as an obligation to account for the same, and that this personal jurisdiction over the pledgee is the true basis of the jurisdiction in rem over the chose in action affected thereby. Obviously, therefore, jurisdiction in rem is not based upon the mere presence of the endorsed certificates.

We have found no case decided by a Federal court or a State court of last resort holding that unpledged stock is subject to foreign attachment by levy upon the certificates. We submit that the doctrine of *Christmas vs. Biddle*, in its application to certificates of stock not pledged, has never been denied by any such court.

There are, however, three cases decided by Appellate Division of the Supreme Court of New York which seem to sustain jurisdiction *in rem* upon foreign attachment over unpledged shares. They are: *Lowenthal vs. Hodge*, 120 N. Y. App., 304, an action in contempt against an attorney for taking attached certificates of stock out of the State in which the question was really only collateral; *People vs. Grifenhagen*, 167 N. Y. App., 572, in which mandamus was allowed to order the sheriff to sell certificates of stock of a non-resident in a foreign corporation which had been attached while on deposit for safekeeping in New York. The third case is *General Motors Co. vs. Ver Linden*, 199 N. Y. App., 375 (1922), in which the Court went to the extreme limit in holding that even unendorsed certificates of stock of a non-resident in a foreign corporation held by a mere

custodian in New York for his benefit were subject to foreign attachment. We submit that these last three cases are contrary to the great weight of authority.

The authority is, therefore (aside from the New York Appellate Division cases), unanimous that unpledged certificates cannot be subjected in a jurisdiction from which the corporation itself is absent. The only fair dispute that seems to remain open upon a review of the cases is with regard to pledged stock. Such stock, or the equity of redemption thereof, has, as seen, been held subject to foreign attachment in two States and two circuits, and has been held not so subject in six States and two districts, and in the intermediate courts of two other States, following the doctrine of *Christmas vs. Biddle*.

The stock in the instant Disconto-Gesellschaft case was free and unpledged and merely in the custody of its London agent, with limited authority, as is shown by the vesting order of the Board of Trade (R., 60): "And whereas the scheduled documents of title are not at the unlimited disposal of the London Agency." Therefore this case falls within what we take to be the overwhelming weight of authority that unpledged stock is not subject to foreign attachment.

The stock in the Bank für Handel & Industrie case was in custody of London bankers with whom that plaintiff had a general running account and a debit balance, to the adjustment of which said stock was subject. The said bank held for said plaintiff securities the value of which was

largely in excess of such indebtedness (R., 65 and 70). On July 21, 1916, the High Court of Justice, Chancery Division, issued summons to the London Bank on application of the

Custodian for an order directing the stock to be turned over to him, and on April 30, 1917 (R., 62), it was ordered that the London Bank should sell enough of the securities on hand to satisfy its claims against the Bank für Handel & Industrie and turn over the balance to the Custodian, who accordingly received the certificates now in question (R., 64). With regard to pledged stock, if we should consider it such, the right to lay foreign attachment against it has been more frequently denied than affirmed; and the few cases in which it has been upheld are offset by *Winslow vs. Fletcher*, New Jersey Sheep and Wool Co. *vs.* Traders' Bank, Armour Brothers Banking Co. *vs.* St. Louis National Bank and Ireland *vs.* Globe Milling Co. and others, *supra*. We also call attention to the case of *Morton vs. Grallin*, 68 Md. 545. It is our contention, therefore, that these shares, for the purpose of seizure, were in the United States and nowhere else.

It is, therefore, respectfully submitted that the shares of stock were mere aliquot parts of American properties; that the certificates did not carry the shares to London; that it never was within the power of the sovereign of Great Britain to enforce their complete transfer to the Public Trustee without the aid the United States or the State of New Jersey; that the Public Trustee never has had and has not now, complete dominion over them, but seeks to establish such dominion through the sovereignty of the United States by the decree in this case. That the shares were not in truth and in fact captured in Great Britain. That America was a neutral nation when one of these proceedings for capture was begun, and that such captures could not have been completed without either her assistance or an invasion of her sovereignty. The criterion of effectiveness uniformly recognized in this country and in England as the basis for jurisdiction *in rem*, when applied to the facts of this case, gives a negative result.

V.

When the Trustee prayed for affirmative relief instead of mere dismissal of this bill, he in effect admitted that he had not the shares but must be put in possession by the courts of this country.

Indeed, the very vesting orders whereon the trustee's claims are based distinguish between the "scheduled documents of title" and the "right, title and interest in and to the scheduled securities."

At this point the Court will find it desirable to consider whether it is established to its satisfaction that the Trustee by seizure of the certificates did not seize the shares themselves. For if the Court should find that the *situs* of the certificate establishes the *situs* of the shares themselves for purpose of seizure within the domain of Great Britain, then the following portions of this brief do not require the consideration of this Court, because plaintiff's case entirely rests upon the fact that the shares themselves did not lie within the territorial domain of Great Britain for purpose of seizure, hence not within the jurisdiction of Great Britain for purpose of seizure.

Applying the reasoning of this Court in the case of *Baker vs. Baker (supra)*, we might, indeed, consider that the Trustee recognizes that he did not seize the shares from the mere fact that in this pending action he seeks affirmative relief; in his answer to the plaintiff's bill he does not request mere dismissal, but prays for a decree compelling the issue of new certificates to himself by the Steel Corporation and the paying over to himself of moneys now held by the

U. S. Steel Corporation as back dividends on these shares. By this, which is in effect a cross-bill, he clearly acknowledges the futility and incompleteness of his own past actions in the sovereign right of Great Britain to compel his recognition as shareholder upon the U. S. Steel Corporation, or to have obtained control over the benefits, which would have been derived by an actual and effective seizure of the shares.

In *Baker vs. Baker* this Supreme Court said that "plaintiff in error in effect acknowledged, when she brought her present action in a Kentucky court, that the Tennessee judgments had no effect *in rem* upon the Kentucky assets now in controversy."

The Vesting Orders (R., 59, 62)—the very foundation of the Trustee's present claim—distinguish between the certificates, which were seized, and the shares themselves, which could not be seized. In recognition of its inability to act *in rem* upon the shares, the Disconto Vesting Order, for instance, was so worded as to purport to divest the right, title and interest of the plaintiff (at that time in Germany) in and to the shares as distinguished from the certificates.

The Vesting Order (R., 59), which was directed at the London Agency of the plaintiff, provided in part as follows:

"Whereas the head office and foreign branches are
"enemies within the above mentioned Act;

"And whereas the scheduled documents of title are
"in the possession of and are held by the said Direction der Disconto Gesellschaft (of 53 Corn Hill),
"hereinafter called the London Agency, for or on
"behalf of the head office or a foreign branch as in
"the schedule more particularly appears;

"But the title to or beneficial interest in the scheduled securities and scheduled documents of title may

"in some instances be vested in persons, firms, bodies,
 "and companies, being respectively enemies or enemy
 "subjects * * *

"And whereas the scheduled documents of title are
 "not at the unlimited disposal of the London
 "Agency * * *

"Now, therefore, the Board of Trade, in exercise of
 "the powers conferred on them * * * do hereby
 "order:

"I. That—

"(1) all the right, title and interest of the head
 "office and foreign branches and of the respective
 "enemies and of the respective enemy holders to and
 "in

"(a) the scheduled securities and any interests or
 "dividends accrued and to accrue due thereon re-
 "spectively; and

"(b) the scheduled documents of title * * *

"do vest in the Public Trustee."

We show this as indicating that the present contention of the Trustee that, when he seized the certificates he seized these shares themselves, is an afterthought, and not because we conceive this Vesting Order to have any extraterritorial force or effect.

In the words of Chief Justice Marshall in the case of *Rose vs. Himely*, 4 Cranch, 241, at 279:

"It is repugnant to every idea of a proceeding *in rem*, to act against a thing which is not in the power of the sovereign under whose authority the Court proceeds; and no nation will admit that its property should be absolutely changed, while remaining in its own possession, by a sentence which is entirely *ex parte*. * * * It is conceded that the legisla-

"tion of every country is territorial; that beyond its
"own territory it can only affect its own subjects or
"citizens.

"It is not easy to conceive a power to execute a
"municipal law, or to enforce obedience to that law
"without the circle in which that law operates."

In so far as such Vesting Order purported to act upon the certificates it was valid and effective, even though the owners were not within the jurisdiction, since the certificates were; in so far as the Order purported to act upon the shares it was ineffective, since the shares were not within the territorial jurisdiction.

VI.

Our foregoing discussion shows not only that the trustee could not seize the shares by seizure of the certificates, but that mere possession of certificates confers no rights in the shares under our municipal law nor, indeed, under the municipal law of England.

But the criterion of effectiveness of the exercise of the belligerent right of seizure is, perhaps, more properly international law. International law is clear and sweeping in its principle that incorporeal things including rights can be seized only by seizure of the corporeal thing to which the right is attached.

Were that not so, any sovereign might by his own laws situate incorporeal things within his jurisdiction and then proceed under color of right established by his law to possess the thing corporeal, in whatsoever country it was situate.

We have heretofore remarked that rights are not susceptible of seizure, strictly speaking, but may be dealt with in several manners under municipal laws, so that the substance of the right is effectively laid hold of.

But under international law the same principle stands forth more clearly and flatly—that a right in a thing may be dealt with in one single manner only, by seizure of the corporeal thing to which the right is attached.

And we believe that the principles of international law are most apt in considering the effectiveness of an asserted seizure under belligerent right.

The most exhaustive and learned discussion upon this subject is perhaps to be found in Phillimore's *International Law* (3d Ed.), Vol. 3, at page 817 *et seq.* The learned writer reviews the theory of international law and the practice of States in this respect from the time of the conquest of Thebes by Alexander the Great to the present day with reference to the commentaries of most eminent international lawyers, including Pfeiffer, Grotius, Puffendorf, Vattel, Lauterbach, Bynkershoek, and others. We give the following *condensation* of his remarks upon this subject, conforming exactly to the writer's phraseology.

Incorporated things are not things on which the conqueror can lay his armed hand. They are rights which exist in mental apprehension. It is, therefore, only by the actual possession of the subject to which they adhere that they can be occupied by the conqueror. If the conqueror, therefore, possesses himself of the corporeal thing to which the incorporeal right is attached, he possesses himself of both.

Does the capture of the person carry with it the possession of his incorporeal rights? The *jura obligationis* especially consist in personal relations, binding at the one end the obligor, at the other the obligee. Therefore, when a person, to whom certain rights belong, is captured, such capture gives the captor only the corporeal and actual things in the possession of his prisoner. The possession of the creditor's person does not give *jus exigendi* of his debts. Incorporeal things do not accure to the conqueror as a consequence of his possession of the person entitled to them.

Do they accrue from his possession of the instruments which contain the legal statement of the obligation? If part of the booty is a promissory note, can the conqueror exact the debt? According to the

Roman Law, the testator, who bequeathed a promissory note, bequeathed the money it promised. The person, who gave up a promissory note signed by the testator, released the testator's representative from the payment of the money. There is in both cases an intention on the part of the person entitled to the money to transfer his right to another, and the bequest or donation of the instrument is the bequest or donation of the proof of the right. No other construction can be put upon the act. In neither case is the *res ipsa* parted with; but it is the possession of the *res ipsa* which is necessary to found title of the conqueror.

In confirmation of these positions it may be observed that the creditor may recover his debt though these instruments be lost or destroyed. Incorporeal rights, therefore, do not accrue to the conqueror from the fact of his having possessed himself of the documents relating to those rights.

When a sovereign meets physical limitations, he cannot surmount them by legislation so that the fiction created by his laws will be recognized outside his territory. For a sovereign to attempt to vest himself of rights in a thing by his own legislation to accomplish that which he cannot in fact do—seize the thing—is to attempt to lift himself by his own boot straps.

The attempt to do this is no new thing in the law. It has been many times contended in this Court that under the full faith and credit clause of our Constitution the judgments and decrees of the courts of our States must be entirely conclusive within the several States. But this Court always uniformly held that the fact of jurisdiction of the *res* or the person, upon which the judgment or decree was founded, was always open to inquiry.

The same contention was brought forward in another aspect when penalties imposed by laws of domestic and foreign States were put in form of judgment of those States. Such States sought thus to give conclusive extraterritorial effect to their penal laws and evade the principle that "the courts of no country execute the penal laws of another" (*The Antelope*, 10 Wheat. 66, 123). But this Court always answered such a contention by stating:

"The rule that the courts of no country execute the
 "penal laws of another applies not only to prosecution
 "and sentences for crimes and misdemeanors, but to
 "all suits in favor of a state for the recovery of pecuniary penalties for any violations of statutes for
 "the protection of its revenue or other municipal
 "laws and to all judgments for such penalties. If
 "that were not so, all that would be necessary to give
 "ubiquitous effect to a penal law would be to put the
 "claim for a penalty into the shape of a judgment."
 (*Wisconsin vs. Pelican Insurance Co.*, 127 U. S., 239, at 291.)

Certain laws are strictly local laws; particularly that class of laws which raise no civil remedy in the inhabitants of a State; laws which may be enforced by an officer of the State only and for the good of the State. Such was the British war legislation. The enforcement of such a law is a most typical act of government, and no government may exert an act of government within a foreign jurisdiction.

The principles here considered in the case at bar are strikingly like those involved in *Baglin vs. Cusenier*, 221 U. S., 597.

In that case a statute of France, known as the Association

Act, made impossible the lawful holding of property by the Congregation of Chartreux, a French Chapter of Carthusian Monks; just as in the case at bar the Trading with the Enemy Act made it unlawful for enemies to hold property within England. A French liquidator was appointed to take over the property of the monks; just as in this case the British Public Trustee was authorized to take over the property of the plaintiffs. The liquidator sought to obtain a declaration in the order of the Court of Appeals of Grenoble vesting the property in him, that his assets included the trademarks in foreign countries. The French court held that he raised the question "whether the law of 1901, which is a law of exception and police, controls or not beyond the territory of the Republic," but left the question unanswered. Thereafter, the monks filed suit in the United States to restrain the use of their trademarks by those claiming under the liquidator.

The defendant's contention was very much like that of the Trustee in the case at bar. As Mr. Chief Justice Hughes stated the contention, it was:

"Not that the French judgments, under which its
 "principal claims, expressly and directly settled the
 "status of the marks abroad, but that the said judgments were effective to vest in the defendant the
 "business and good will inseparately connected both
 "in this country with the place and mode of fabrication, and, therefore, gave him the right, in virtue of
 "the principles of our law, to use the trade-marks
 "connected therewith."

In that case there are many questions of trade-mark laws considered which have no application to the case at bar.

But we would call particular attention to the fact that in the opinion of this Court it was stated:

"On the merits, the questions presented are:
 "* * * (2) what effect upon their rights had
 "the liquidation proceedings in France."

This Court sustained the monks upon the contention that the liquidation proceedings had no effect, and held:

"The French law cannot be conceived to have any
 "extraterritorial effect to detach the trade-marks in
 "this country from the product of the monks, which
 "they are still manufacturing.

"The matter was put thus by Lord Menaghten in
 "the House of Lords in *Lecouturier vs. Rey*, 1910,
 "A. C., p. 265:

"To me it seems perfectly plain that it must be
 "beyond the power of any foreign court or any
 "foreign legislature to prevent the monks from avail-
 "ing themselves in England of the benefit of the
 "reputation, which the liqueurs of their manufac-
 "ture have acquired here, or to extend or communi-
 "cate the benefit of that reputation to any rival or
 "competitor in the English market. But it is cer-
 "tainly satisfactory to learn from the evidence of ex-
 "perts in French law, that the law of associations is
 "a penal law,—a law of police and order,—and is
 "not considered to have any extraterritorial effect."

VII.

A.

No confirmations of the treaty of Versailles apply because:

(a) They were limited to property within the respective nations by the terms of the treaty itself, and

(b) The treaty itself, for its own purposes, defines shares of stock as property at the domicile of the corporation.

The chief contention of the British Public Trustee based upon the Treaty of Versailles is that by Article 297 of that treaty all "exceptional war measures and measures of transfer" have been confirmed.

We need not discuss the involved and indefinite question of how far this Article of the Treaty of Versailles is binding upon the United States, either *ex proprio vigore* or by way of some exercise of option reserved under the terms of the Treaty of Berlin to the United States.

Our answer is most clearly given by turning to this Article 297 itself.

That the confirmations were limited to each ally nation in respect of German property within *its own* territory appears from subsection (b) of Article 297:

"Subject to any contrary stipulations which may be provided for in the present Treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights, and interests belonging at the date of coming into force of the present

"Treaty to German nationals, or companies controlled
 "by them, within their territories, colonies, posses-
 "sions, and protectorates, including territories ceded
 "to them by the present Treaty.

"The liquidation shall be carried out in accord-
 "ance with the laws of the Allied or Associated
 "State concerned, and the German owner shall not
 "be able to dispose of such property, rights, or inter-
 "ests nor to subject them to any charge without the
 "consent of that State. * * *

That a share of stock was to be taken as property within the territory of the nation wherein the corporation was domiciled appears from Section 10 of the annex following and ancillary to Article 297:

"Germany will, within six months from the coming
 "into force of the present Treaty, deliver to each
 "Allied or Associated Power all securities, certificates,
 "deeds, or other documents of title held by its na-
 "tionals and relating to property, rights, or interests
 "situated in the territory of that Allied or Associated
 "Power, including any shares, stock, debentures, de-
 "benture stock, or other obligations of any company
 "incorporated in accordance with the laws of that
 "Power. * * *

The Supreme Court of South Africa, Appellate Division, found upon these sections, in the case of *Randfontein Estates vs. Custodian of Enemy Property*, that shares of a mining company incorporated and registered in the Transvaal were property within the South African Union under the stipulations of the treaty. The Court, in determining the question, found it necessary to discuss and apply the

particular provisions in the treaty hereinabove quoted. The reasoning of Judge Solomon, in which the five judges concurred, was as follows:

"No doubt if Article 297 (*b*) stood alone it would "have been necessary to determine whether by our "law bearer shares and debentures are to be regarded "as situate in the place where they are found or in "the country where the company is registered. But "Article 297 (*b*) does not stand alone; it is to be "read with paragraph 10 of the Annex to Section "IV of the treaty. Paragraph 10 provides that 'Ger- "many will within six months from the coming into "force of the present treaty, deliver to each allied or "Associated Power all securities, certificates, deeds, or "other documents of title held by the nationals and "relating to property, rights or interests situated in "the territory of that allied or Associated Power, in- "cluding any shares, stock or debentures, debenture "stock or other obligation of any company incor- "porated in accordance with the laws of that Power.' "

* * *

"Section 10, therefore, makes it obligatory upon "Germany to deliver to the Union of South Africa "any bearer shares and debentures held by its na- "tionals in Germany of any company registered in "the Union. That means that under the Treaty such "bearer securities are regarded as being situate in "the Union, for if they were situated in Germany, "Article 297 (*b*) of the treaty would have nothing "to say to them. The object of handing over such "securities is, of course, that they may be dealt with "in accordance with Article 297 (*b*) of the treaty, "that is to say, that they may be liquidated; section "10 of the Annex being ancillary to that Article. It "is clear, therefore, that in directing the delivery of

"bearer shares and debentures, the framers of the
 "treaty regarded them as falling within the words
 "property, rights and interests belonging to Ger-
 "man nationals within the territories of the Allied
 "and Associated Powers.' And we must interpret
 "those words in the sense in which they were used
 "by the parties to the treaty, just as we should have
 "done if there had been an interpretation clause ex-
 "pressly including bearer shares and debentures
 "within the general words 'property, rights and in-
 "terests.' * * *

Randfontein Estates Gold Mining Company
vs. Custodian of Enemy Property, South
 African Law Reports, App. Div., 1923, p.
 576 (in files Congressional Library).

This, then, was the maximum of these confirmations;
 that they applied in favor of each nation in respect of
 property which lay within its territorial jurisdiction, in-
 cluding shares of stock of corporations organized under its
 laws. But the United States Steel Corporation is not or-
 ganized under the laws of Great Britain nor domiciled
 therein.

B.

The treaty of Versailles, Article 298, that no claim
 shall be made against any person acting under the di-
 rection of any allied power by a German citizen, has no
 application here. This is not a claim brought against
 the public trustee but is a bill to remove cloud from
 title to property within the United States.

(a) Article 298 Annex paragraph 2, reads:

"No claim or action shall be made or brought
 "against any Allied or Associated Power or against

"any person acting on behalf of or under the direction of any legal authority or Department of the Government of such a Power by Germany or by any German national, wherever resident, in respect of any act or omission with regard to his property, rights or interests during the war or in preparation for the war. Similarly, no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power."

When read as a whole, its purpose and effect is clear. It was to render the Allied governments and all officials and private persons, who acted under their war legislation, immune from claims of liability.

In the case at bar there is no claim of liability asserted on account of any action under the authority either of Great Britain or the United States. The plaintiff seeks to clear the cloud upon its title to property located within the United States, and names two parties defendant, the Public Trustee and the Steel Corporation. As to the Steel Corporation, it admits that it has done no act under the authority either of Great Britain or the United States, but, on the contrary, states that it has refused to act at the request of Great Britain, and that the United States has made no demand upon it for any act in the premises.

In so far as there might be conceived to be any immunity to the Trustee from being joined as formal party to this suit under said Article 298, it could not be greater than the general immunity of a sovereign.

Even a sovereign is not immune from being made a formal party to a bill to remove cloud upon title to property within

the jurisdiction of a Court of the United States, providing no affirmative relief is requested or necessary to an effective decision, but merely the adjudication of status of the property, as stated by Chief Justice Marshall, delivering the unanimous judgment of this Court in *United States vs. Peters*, 5 Cranch 115:

"It certainly can never be alleged that a mere suggestion of title in a State to property, in possession of an individual, must arrest the proceedings of the court, and prevent their looking into the suggestion, and examining the validity of the title."

which was cited in *Tindal vs. Wesley*, 167 U. S., 204, in which was further held:

"Whether the one or the other party is entitled in law to possession is a judicial, not an executive or legislative question. It does not cease to be a judicial question because the defendant claims that the right of possession is in the Government of which he is an officer or agent. The case here is not one in which judgment is asked against the defendants as officers of the State, nor one in which the plaintiff seeks to compel the specific performance by the State of any contract alleged to have been made by it, nor to enforce the discharge by the defendants of any specific duty enjoined by the State." * * *

To substantially the same effect see also *Lariviere vs. Morgan* (Eng. Ch. App., 1872), 1871, 2 L. R., 7 Ch. App., 550, *The Charkieh* (Eng. Adm. 1873), L. R. 4, Adm. & Ecc., 59, *Schooner Exchange vs. McFadden*, 7 Cranch, 116, at p.

138, *The Prince Frederik* (Eng. Adm., 1820), 2 Dodson 451, *Duke of Brunswick vs. King of Hanover* (Eng. Rolls Ct., 1843), 6 Beaven 1, in which it was said (p. 39):

“There have been cases in which this Court being
 “called upon to distribute a fund in which some
 “foreign sovereign or state may have had an inter-
 “est, it has been thought expedient and proper, in
 “order to a due distribution of the fund to make such
 “sovereign or state a party. The effect has been, to
 “make the suit perfect as to parties, but as to the
 “sovereign or state made a Defendant in cases of
 “that kind, the effect has not been, to compel, or at-
 “tempt to compel, such sovereign or state to come
 “in and submit to judgment in the ordinary course,
 “but to give the sovereign an opportunity to come
 “in to claim his right, or establish his interest in the
 “subject matter of the suit. Coming in to make his
 “claim, he would, by doing so submit himself to the
 “jurisdiction of the court in that matter; refusing
 “to come in, he might, perhaps, be precluded from
 “establishing any claim to the same interest in an-
 “other form, so when a defendant in this country is
 “called upon to account for one matter in respect
 “of which he has acted as agent for a foreign sov-
 “ereign, the suit would not be perfect as to parties
 “unless the foreign sovereign were formally a De-
 “fendant, and by making him a party an oppor-
 “tunity is afforded him of defending himself instead
 “of leaving the defense to his agent, and he may
 “come in if he pleases; in such a case, if he refuses
 “to come in, he may perhaps be held bound by the
 “decision against his agent.”

VIII.

The trustee can trace no claim to these shares through the Treaty of Berlin, since the only possible effect which that treaty might be conceived to have upon these shares would be to place them at the disposal of our Congress. But that treaty did not affect these shares at all.

The Treaty of Peace between the United States and Germany, proclaimed on November 14, 1921, known as the Treaty of Berlin, provides:

"Article I. Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations or advantages specified in the aforesaid Joint Resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such Treaty has not been ratified by the United States."

The said Joint Resolution of Congress of July 2, 1921, provided:

"Sec. 5. All property of * * * all German nationals, which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, * * * shall be retained

“by the United States of America and no disposition
 “thereof made, except as shall have been heretofore
 “or specifically hereafter shall be provided by law
 “until such time as the Imperial German Govern-
 “ment * * * shall have respectively made suit-
 “able provision for the satisfaction of all claims
 “against said Government respectively, of all per-
 “sons, wheresoever domiciled, who owe permanent
 “allegiance to the United States of America.” * * *

These terms evidently apply to the property of German nationals in the hands of our Alien Property Custodian or other agencies of the United States and not to all German property within the confines of the United States. If that were not the case, it would have been so much easier to say: “All property of all German nationals which was on April 6, 1917, within the territory of the United States.”

We, therefore, believe the suggestion of the Steel Corporation that the United States has any inchoate right in these shares by virtue of these provisions is ill-founded. If the interpretation suggested by the Steel Corporation is correct, it would cast a cloud on the title of every German within the United States to all the property he possesses, both real and personal, although that property was not even liable to seizure under the “Trading with the Enemy Act” while we were at war, unless its owner was first interned.

The property in suit was not seized or attempted to be seized by the United States nor any agency thereof, because in the normal course of dealing the shares in suit had been so so registered on the books of the corporation that their ownership did not appear as German.

The Trustee agrees with our interpretation of these terms

of the treaty. But it is obvious that if Article I of the Treaty of Berlin had any force at all upon the shares in suit that it must have had the force of its own provisions and no other force, namely, that the shares be retained by the United States of America for such purposes as should be provided by law. It seems obvious, therefore, that the Trustee must of necessity recede from his position that the Treaty of Berlin, directly or indirectly, operated upon the shares in suit, since such a contention would be diametrically opposed to any claim whatever on his part.

IX.

No one can deny that up to the conclusion of peace between Germany and the United States in 1921 these shares were in the power of the United States alone. If the United States had exerted that power to seize them the appellants could have already received them back under existing legislation of the United States.

Since that time these shares could not come within the power or control of Great Britain except by some delivery over, actual or constructive, by the United States. If these shares are so delivered over to the British trustee, it is for virtual confiscation.

When the District Court took jurisdiction of this case, its processes operated upon these shares within its jurisdiction and its decree compelling the Steel Corporation to recognize the trustee as owner was in effect a fresh and original delivery over to the trustee. This no law of the United States gave the court jurisdiction to do; indeed, this contravened the policies of the United States as expressed in its legislation and treaties.

As shown in the preceding section, the United States by the Treaty of Berlin retained all German property seized in the United States *until* the claims of American nationals against Germany should be suitably *provided for*. There has been no legislative intimation that the American claims were to be settled *out of* the German property. The latest legislative expression with regard to the German property seized here is in the Amendment to the "Trading with the Enemy Act"

passed on March 4, 1923, providing among other things that the property of Germans seized by our Alien Property Custodian should be returned to its owners to the following extent:

Money or other property owned by the Government of Germany as diplomatic or consular property;

Money or property of Germans accredited to the United States as a diplomatic or consular officer of Germany in so far as such property was within the territory of the United States by reason of service in such capacity; the money and other property of Germans who had been interned; \$10,000 to each German not specially otherwise provided for, and as to any balance in excess of \$10,000 the annual increment thereof to the extent of not more than \$10,000 per annum.

The passage of this law, particularly in the light of the attendant circumstances, the Congressional debates, and the terms of the Treaty of Berlin as set forth in the preceding section, show clearly that this property is not confiscated but held in pledge against the securities for American claims to be forthcoming from the German government. That the United States might at a later time adopt a new policy is possible, but its present policy is clear.

If this property in suit had been seized by the United States the plaintiffs could have filed their claims under this amendment to the "Trading with the Enemy Act" and it would already have been returned to them.

On the other hand, if this property should come into the possession of the Trustee, it would be virtually confiscated. The policy of Great Britain in respect of its captured property is opposite to that of the United States. One of the latest legislative expressions of Great Britain is found in her Treaty of Peace Order of 1921 (R., 102) in Section 16, that

"all property, rights and interests within His Majesty's dominions" belonging to German nationals and their proceeds are charged in the first place with payment of amounts due upon claims of British nationals with regard to their property in German territory or debts owing to them by German nationals; with the payment of compensations awarded by the Mixed Arbitral Tribunal; with the payment of claims growing out of the acts of the German Government during the war; with payments of the amounts due in respect of claims by British nationals with regard to their property, rights and interests in the territories of Austria-Hungary, Bulgaria and Turkey.

Certainly up to the conclusion of peace between the United States and Germany the shares in suit had not been confiscated by the British Government for the simple reason that the British Government could not lay hold of them, for they were in the United States and under the protection of its laws and in the State of New Jersey and under the protection of her laws. Nor can the British Government since that date have come into the United States to take these shares. The power of the United States or of the State of New Jersey would have to lay hold of these shares and turn them over to Great Britain before she could have them.

We submit that the United States has not exerted her power in this manner, and while it may be that the United States might exert its power in such a manner by an act of Congress, the propriety of such exertion is a matter for the legislative and not the judicial branch of government. We further submit that even for our Congress to so act would be contrary to our traditional policy first stated by Alexander Hamilton in the following words:

"The right of holding and having property in a country always implies a duty on the part of its government to protect that property and to secure to the owner the full enjoyment of it. Whenever, therefore, a government grants permission to foreigners to acquire property *within its territories* or to bring and deposit it there, it tacitly promises protection. There is no parity between the case of the persons and goods of enemies found in our country and that of the persons and goods of enemies found elsewhere. In the former, there is a reliance upon our hospitality and justice; there is an implied safe-conduct; the individuals and their property are in the custody of our faith; * * *

"The property of a foreigner placed in another country by permission of its laws may justly be regarded as a deposit of which the society is a trustee. How can it be reconciled with the idea of a trust to take the property of its owner when he has personally given no cause for its deprivation?"

Camillus Letters XIX.

Wherefore we respectfully submit that the decrees of the District Court for the Southern District of New York in these instant cases should be reversed.

ALFRED K. NIPPERT,
JOHN WILSON BROWN, III.
JOHN WELD PECK.



15

U.S. District Court, D. C.
FILED IN
JAN 7 1925
W. A. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES

APPEALS FROM THE

No. 572

**DIRECTOR OF ECONOMIC COOPERATION
ADMINISTRATION**

**UNITED STATES STEEL CORPORATION, PUBLIC
TRUSTEE, EBERHART JOHN WELLS ET AL.
ETC.**

No. 573

**UNITED STATES STEEL CORPORATION, PUBLIC
TRUSTEE, EBERHART JOHN WELLS ET AL.
ETC.**

**UNITED STATES STEEL CORPORATION, PUBLIC
TRUSTEE, EBERHART JOHN WELLS ET AL.
ETC.**

APPELLANTS' SUPPLEMENTAL BRIEF IN REPLY

**ALFRED E. HOFFMAN
JOHN WELLS BROWN III
JOHN WELLS BROWN
Appellants' Attorneys**

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 676.

DIRECTION DER DISCONTO GESELLSCHAFT,
APPELLANT,

vs.

UNITED STATES STEEL CORPORATION, PUBLIC
TRUSTEE, EGREMONT JOHN MILLS ET AL.,
ETC.

No. 677.

BANK FÜR HANDEL UND INDUSTRIE, APPELLANT,

vs.

UNITED STATES STEEL CORPORATION, PUBLIC
TRUSTEE, ENGLISH ASSOCIATION OF AMERI-
CAN BOND AND SHAREHOLDERS, LIMITED,
ET AL.

APPELLANTS' SUPPLEMENTAL BRIEF IN REPLY.

In replying to the arguments of the Trustee based on the Treaty of Versailles, we say that as all parties admit that this case is governed by the law of New Jersey, we deem that treaty irrelevant. But, in so replying, we shall show that, even if that treaty had the force of law in New Jersey, our contentions would prevail under its very terms.

The Appellee British Public Trustee admits:

1y

"The question of who is entitled to be registered as owner on the books of the company is a matter ultimately governed by the law of the state of charter."
(Brief, page 54.)

This concurs with the view of the United States Steel Corporation (Brief, page 7) and of the District Court and with our own view.

Thereafter in his brief the Public Trustee, in his points II to VI, discusses at length the provisions of the Treaty of Versailles. Since he admits the case is governed ultimately by the law of New Jersey, his inference is that said treaty has been in some manner made a part of the law of New Jersey.

We shall, therefore, take up the appellee's treaty points separately, always assuming, for the sake of argument merely, that this Treaty of Versailles is to be considered as bearing upon the subject. In other words, as though this case were being decided under the law of England, where that treaty is in force, instead of by the law of New Jersey, which is, concededly, the law by which this case is governed.

I.

In reply to Appellee Public Trustee's Point II, that the Treaty of Versailles has confirmed his "Taking over of the stock in question," we say:

(1) Since the shares of stock were property within the United States of America, the only possible effect of the confirmation of section 297 (d) of the treaty and its annex was to reserve their disposition to the United States of America by the very language of the treaty

itself and, therefore, to exclude them from the jurisdiction of Great Britain.

(2) The orders in council and judicial decisions of Great Britain have so construed these confirmations and reservations and have not attempted to operate on foreign shares, nor to charge them with any of the claims of herself or of her nationals.

I.

Annex Par. 1, confirming vesting orders, is and by its language purports to be merely an elaboration of Section 297 (d). Therefore the terms are subject to the exception contained in that section.

Section 297 (d) confirms all exceptional war measures, etc., as defined in paragraphs 1 and 3 of the Annex "*except as regards the reservations laid down in the present treaty.*" (The italics throughout are our own.)

By its very purport and also by the interpretation placed thereon by the High Court, Chancery Division,* the general language of the confirmations contained in Section 297 (d) and its Annex must yield to the rights reserved by other sections of the document. Chief of the rights so reserved is:

"The right of each of the Allied and Associated Powers to dispose of enemy assets and property within its jurisdiction at the date of the coming into force of the present Treaty,"

which is specifically affirmed by Section 252.

**Re Niederhaus*, Ch. Div., March 18, 1920; 36 Times Law Reports (1920) 425.

It is also declared by the same section that the aforesaid right is *not* affected by the general lien of reparations which is laid on all the property and assets of the German Empire by Section 248.

This right is further expressed in the form of a "reservation" by Section 297 *b* (and *c*).

"(b) Subject to any contrary stipulations which may be provided for in the present treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights and interests belonging at the date of the coming into force of the present treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates, including territories ceded to them by the present treaty."

The right of complete disposition of enemy assets within the territory of each power is, therefore, one of the reservations laid down in the present treaty. The right was intended to be paramount and was placed above any confirmations of vesting orders, just as it was placed above even reparations themselves by Section 252.

The treaty further says:

"The liquidation shall be carried out in accordance with the laws of the Allied or Associated State concerned, and the German owner shall not be able to dispose of such property, rights or interests nor to subject them to any charge without the consent of that State" (297 b).

The corollary is that, with the consent of that State, the German owner would be able to dispose of his property

therein without the consent of any other State. Furthermore, this clause left property in the United States to be disposed of by its laws.

That no extraterritorial force was intended to be given to vesting orders by the confirmations is further illustrated by Annex 4 of Section 298, which declares that the property of German nationals within the territory of any of the powers *may be charged by that power with the claims of its nationals*.

Nor is this weakened by the language of Section 297e further providing that such German property within the territory or under the control of the claimant's State shall be a pledge for the liabilities of Germany to it. The phrase "under the control of the claimant's State" here undoubtedly means under its control as a sovereign so as to include enemy property within dependencies, as for instance, German property within British protectorates. We shall show that it was in fact so interpreted by Great Britain in the Treaty of Peace Orders in Council.

The general principle or scheme of the Treaty of Versailles is plain. As remarked by Lord Shaw, of Dunfermline, concerning that part of the treaty now in question:

"I think it is plain that the scheme throughout deals with German nationals on the one hand and persons who are not German nationals on the other, and contemplates the liquidation of property of the former for the satisfaction of the claims of the latter, the right of liquidation being given to the particular power among the Allied and Associated Powers in whose territory the property of such German nationals happens to be situated." *

*Kramer vs. Att'y General, 39 Times L. R. 462, May 4, 1923.

Confiscation, *as such*, of private property of enemy nationals was scrupulously avoided. A lien, however, was laid upon enemy property within each of the respective nations for the security of German obligations to its nationals.

To each nation is carefully reserved its sovereign right to deal with all enemy property within its own territory. This necessarily excludes the right of every other nation. Therefore the confirmations of the British vesting orders could only operate upon property in British territory.

2. Great Britain herself has fully recognized this right, as it existed during the war at international law and the reservation thereof as laid down in the Treaty of Peace, and has by her Peace Orders attempted no extraterritorial subjections of property based upon any documents of title that had chanced to be captured in Great Britain.

The declaration of war did not *per se* affect enemy property within the domain. Marshall, C. J., in *Brown vs. U. S.*, 8 Cranch 110-122. Any claim of title of the Trustee, therefore, even under the language of the Treaty of Versailles, must lie in the express legislative acts of Great Britain; concretely, either in the Trading with the Enemy Acts or the Treaty of Peace Orders in Council. The former went no further than to authorize what were called "vesting orders," the legal effect of which must be considered.

The "vesting orders" were not dispositions of property. They were mere sequestrations, the property to be held and dealt with at the end of the war by Orders in Council.

Trading with the Enemy Act 5 (1) (R. 78):

"(5) (1) The Custodian shall, except so far as the Board of Trade or the High Court or a judge thereof may otherwise direct, and subject to the provisions of the next succeeding subsection, hold any money paid to and any property *vested* in him under this Act until the termination of the present war, and shall thereafter deal with the same in such manner as His Majesty may by Order in Council direct."

It was specifically held by the High Court that*—

"The effect of the vesting orders was merely to deprive the owner of the beneficial ownership of the property *which remains in abeyance* until dealt with by orders in council under Section 5."

It is worthy of notice in passing that the British Trading with the Enemy Acts, while making frequent reference¹ to the seizure of stock of domestic corporations and forbidding the transfer of shares registered within the Kingdom, nowhere touches the stock of foreign corporations, except to require dividends thereon, *if payable in the United Kingdom*, to be paid to the Custodian, the Public Trustee.² The "criterion of effectiveness," as the basis of jurisdiction, was closely observed.

Inasmuch as the vesting orders were merely sequestrations of property to be held until the end of the war and then to

**Re Munster*, 36 Times Law Reports (1920) 173. *Armstrong on War and Treaty Legislation, 1914-1921* (Hutchinson & Co., London, 1921), pages 103, 108, 130, 131, and 243.

¹R. 77, 80, 83.

²R. 83.

be dealt with by His Majesty's Orders in Council, the confirmations thereof were no broader. Therefore the confirmations of vesting orders amounted only to this—that property seized should be held until dealt with by such orders. The Orders in Council were required, necessarily, to conform to the principles laid down in the Treaty of Peace, and, as we shall show, they did so.

It is, therefore, to the Orders in Council that the Public Trustee must now trace his title and his authority to deal with sequestered property. The vesting orders were mere mesne process. They may be likened to the writ of attachment, under which property has been seized to abide the decision. The orders in Council may be likened to the judgment. It is to the judgment that we must look, for in it will be found the final action of Great Britain upon seized property and her own interpretation of her rights (under the Treaty of Versailles) with regard thereto. These orders are found in the record at page 98.

They are entitled "Treaty of Peace Orders" (Consolidated), comprising the original Treaty of Peace Order of 1919, followed by four amendments, two of the year 1920 and two of the year 1921. Therefore they lack nothing of deliberation or of completeness. They purport to deal with the exact subject in hand, for they say "it is expedient that for giving effect to those sections (set out in the schedule to this order) the provisions hereafter contained should have effect" (R. 99). One of the sections set forth in the schedule is Section IV of the Treaty of Versailles, entitled "Property, Rights and Interests," which part of the treaty comprises the previous sections under consideration, viz., Sections 297, 298, and Annex thereto.

The Orders (in adherence to the treaty) charge merely a lien in favor of the claims of British nationals upon German property. They go no further. They do not attempt confiscation. Indeed, it seems settled that confiscation of enemy private property is contrary to the law of England. It was so argued by the Attorney General of England and accepted by Lord Justice Russel *in re Munster (supra)*. By the Orders Great Britain took what was virtually a mortgage upon the German property involved, and for the extent of that mortgage we must go to the description of the property subjected to the lien thereof as contained in the document itself. It is this:

xvi. "All property rights and interests within His Majesty's Dominions or Protectorates belonging to German Nationals at the date when the treaty comes into force are hereby charged" (R. 102).

with debts due British nationals by Germany, as therein provided, and also with claims for injuries to the property of British nationals in Austria-Hungary, Bulgaria, and Turkey. Thus Great Britain has observed and interpreted the terms of the treaty as hereinabove set forth by fastening a lien upon only such German property as lay within her domains.

Where the property charged consists of registered stock the Orders prescribe that the corporation, on application of the Custodian, must enter him in its books as the owner thereof, "*notwithstanding that the Custodian is not in possession of the certificate, script, or other documents of title relating to the shares*" (17 c, R. 103). This obviously refers to British corporations and dovetails exactly with Treaty 298,

Annex 10, which provides that Germany will within six months deliver to each Power certificates and all other documents of title relating to property situated therein, including shares of stock "*of any company incorporated in accordance with the laws of that Power.*"

It is thus demonstrated that these Peace Orders (which must be the foundation of any title of the British Public Trustee, even as claimed under the terms of the Treaty of Versailles as construed by English law) do not claim any *extraterritorial* force on the theory now advanced by the Trustee, viz., that the seizure of "documents of title" to shares beyond the realm was made effectual by the confirmations of the treaty. Had Great Britain so conceived her rights she undoubtedly would have made her Peace Orders broad enough to effectuate them, and would have charged, not only German property within His Majesty's Dominions and Protectorates, but also such property situated elsewhere which she claimed by the seizure of documents of title and the confirmations of the treaty. No such right was asserted or intimated.

On the other hand, *the British Peace Orders leave no room for any other nation to lay similar claim to shares of corporations situated in the territory of Great Britain.* for the Orders charged "all" enemy-owned property in her domains, and, as to stock, they required the Custodian to seize the shares on the books *regardless of the whereabouts of the certificates.*

Therefore we say that the principle of internal sovereignty over enemy property is recognized, expressly asserted, and, in apt words, reserved as paramount by the treaty; that this necessarily excludes the sovereignty or dominion of any

other nation; that this is a fundamental and essential part of the scheme of the treaty; that the confirmations of the vesting orders are in general language and must give way to the paramount right; that the only charge authorized by the treaty against German private property within the territory of the Allied and Associated Powers was a lien for the debts due the nationals of that power alone; that it was never intended by Section 297*d* or Annex 1 to give extraterritorial force to vesting orders or incomplete seizures; that vesting orders were mere sequestrations, and that the ultimate disposition of the property is to be found in the Treaty of Peace Orders, which contain the whole sum of the asserted rights of Great Britain and the whole sum of the authority of the appellee, the British Public Trustee; that these Orders attempted no extraterritorial force, based either upon the confirmations of the Annex or upon anything else, but, on the contrary, while vigorously subjecting German property within His Majesty's Domains and Protectorates, they carefully refrained from laying or attempting to lay any charge against German property elsewhere.

Wherefore we assert that these shares of stock, being in their essence property situated in the United States of America, were not even contemplated as within the confirmations of Section 297 (*d*) and Annex 1 of the Treaty of Versailles, nor within the Treaty of Peace Orders of His Majesty in Council, and that the defendant, the British Public Trustee, is without any title thereto, even under the terms thereof.

II.

In reply to the Public Trustee's Point III,—That the German Government possesses the power to devote the property of its nationals wherever situate to the settlement of the war,—we say:

1. This is irrelevant because under the terms of the Treaty of Versailles itself Germany undertook to devote the shares in suit to the United States and not to Great Britain.

2. A sovereignty may not so devote the property of its nationals wherever situate, but only such property as lies within its territory or the territory of a nation with which it contracts by treaty. Property lying within the territory of a third nation does not lie within the effective control of such contracting parties; in fact the right of complete control of the latter property is a fundamental part of the sovereignty of that third nation which in its sovereign nature must have exclusive jurisdiction and control of all persons and things within its territory.

1. It is irrelevant whether Germany could or could not charge the property of her nationals in the United States in favor of Great Britain. This is because she did not under the terms of the treaty with Great Britain attempt to so charge this property.

The charge upon German private property in the United States is that authorized by Article 297 (b) and paragraph IV of the Annex thereto, which reads in part as follows:

"All property, rights and interests of German nationals within the territory of any allied or associated power and the net proceeds of their sale, liquidation or other dealing therewith may be charged by *that* allied or associated power in the first place with payment of amounts due in respect of claims by the nationals of *that* allied or associated power with regard to their property, rights and interests * * * in German territory, or debts owing to them by German nationals, and with payment of claims growing out of acts committed by the German Government. * * * They may be charged in the second place with payment of the amounts due in respect of *such* allied or associated power with regard to their property, rights and interests in the territory of other enemy powers."

In so far as any German property was within the territory of the United States the charge clearly laid by the above section was in favor of "that Allied or Associated Power" within whose territory the property lay, *i. e.*, the United States of America and none other.

Not only is no other construction of these terms possible, but any construction which limited the full sovereignty of the United States in respect of property within its territory would be in derogation with its inherent sovereign rights. Not only so, but any other construction would be in direct conflict with the clear terms of our Treaty of Berlin, which provide that the United States shall retain the German property which was in its possession or control on or since April 6, 1917, until such time as German government shall have made provision for the satisfaction of claims of Americans.

The assessment of these claims, for which the charges lay

by the Treaty of Berlin and Article 297, Annex, paragraph IV, of the Treaty of Versailles, are at the present time being assessed under a separate agreement entered into on August 10, 1922, between the United States and Germany providing for "a Mixed Claims Commission to determine the amount to be paid by Germany in satisfaction of Germany's financial obligation."

2. It is, of course, conceded that the German Government possesses the power to devote the property of its nationals within its *own* territory to the termination and settlement of the war. This power rests upon the actual power of that Government to seize the property in question, if necessary, to enforce its requisitions. The test of the limit of this power is the test of its effective exercise. It is further conceded that whenever two nations conclude a peace and by treaty agree to affect the property of the respective nationals within the territory of *either*, the criterion of effectiveness is fulfilled from the fact that such property lies within the power of one or the other of the two sovereignties. Since the two sovereignties have agreed, it makes no difference which of the two enforces the provisions of the treaty upon property within the respective dominions.

It is most certainly *not* conceded that any nation or any group of nations possess, either in law or in fact, the power, either by domestic legislation or by treaty, to affect property of their nationals which lies within another sovereign State which has not undertaken by treaty to enforce the terms of the domestic legislation, or the common treaty, as the case may be.

We can bring forward no ruling expressly on this point for the reason that such a claim of power to affect the prop-

erty of nationals in foreign sovereignties has never in the past been asserted. We point out that all of the instances mentioned in appellee's brief are instances where the sovereignty of the property itself has by treaty agreed with the sovereignty of the national as respecting the property and the claims of nationals thereto. These two sovereignties jointly had jurisdiction both of the person and property, and, this being the case, the effectiveness of their action could not be questioned in fact or in law.

But if it were held that a nation, either by domestic legislation or by treaty with another nation, might exercise power over the property of its nationals lying in a third sovereignty, so that the attempted exercise would be recognized within the third sovereignty, then, indeed, it would also be established that any foreign nation by the passing of a law or by a treaty with another nation may arm itself with authority to come into the United States and through our courts acquire for its own use the property of its nationals situate in the United States, even though those nationals be resident in the United States and therefore protected by our Constitution.

Nor would this apply to extraordinary measures alone, but to the enforcement of taxation even to the point of nationalization of private property, as in Russia.

Nor is this power in any way to be presumed from the doctrine in our law that the sovereign has inherent power to tax its citizens wherever resident. It is the question of the collection of that tax by the processes and under the laws of the foreign jurisdiction.

III.

In reply to the Trustee's Point IV that the German Government has obligated itself to compensate its nationals for their property so devoted to the public use, we say:

It is immaterial whether Germany has or has not undertaken to compensate her nationals. At international law the effectiveness of the dealing of a nation with its nationals' property is neither lessened nor made more firm by the fact of compensation for its taking. It is the effectiveness of the dealing with the property alone which is examined into abroad.

If Germany has effectively dealt with the property and yielded it to another nation by treaty, it would not lessen the effectiveness and validity of that exercise of power if she paid her nationals no compensation. On the other hand, if she did not effectively deal with such property it makes no difference whether she offered full compensation. The question is as to the dealing with the property, not with equitable pretenses.

But under this point the appellee implies that which he cannot state more definitely—that the owners of certain property similarly situated to that in suit have received compensation from the German Government in respect of their property devoted under the terms of the treaty. The appellee also states that proceeds of sale of some securities similarly situated to those in suit have been receipted for by and credited to the German Government, wherefore, he

says, a course of dealing has been established between the two governments.

The statements of *fact*, as set forth by the Trustee, are strictly in accordance with the record, but his *inferences*, as set forth, are entirely unsupported by the record and, we feel, unwarranted.

All the record has to say on the subject is this:

"Certificates of stock in American corporations other than those described in paragraph 2 hereof, and which were similarly seized by the British Public Trustee have been sold by him. The proceeds of some such sales have been already credited to and accepted by Germany under the provisions of the Treaty of Versailles. In some instances Germany has made payments to its nationals whose certificates of stock in United States corporations were so seized and sold by the British Public Trustee and the proceeds credited to Germany" (R. 69).

If there is any point in this, our answer is as follows:

If any national of Germany accepted a payment from the German Government as compensation for his property disposed of or attempted to be disposed of by the German Government, he might be estopped from claiming title to the property. But in the case at bar this is admittedly not the case.

In so far as any action between the governments establishes a course of construction of the treaty it is necessary to show more than an accidental or routine acceptance of a credit. There must be shown to have been a knowledge of all the attendant circumstances and an intentional and volun-

tary acceptance in the face of that knowledge. Upon this the record is entirely bare.

The appellee Public Trustee also raises in this point the question as to the fact that the appellants were tardy in claiming the property in suit. Surely it does not lie with the appellee to raise this point, since he did not claim the property in the United States at all until after the appellants had initiated the present proceeding. Doubtless the truth of the delay on both sides was for the same reason—that both, the appellants and the appellee, conceived that this property lay at the disposal of the United States up to the moment of the Treaty of Berlin and any action on the part of either up to that time would have been premature. But, as we have said, the Treaty of Berlin did not take this property for the United States, but left it free for the appellants, whereupon these proceedings were started.

IV.

In reply to the Trustee's Point V, that the Treaty of Versailles contains a covenant binding these appellants not to question the Trustee's title, we say:

This assertion does not overcome the showing of our brief VII B to the effect that this is not a claim such as contemplated by the section quoted by the Trustee in support; neither does this suit complain of the act of any person "done or omitted," but is a suit to remove cloud on title to property in the United States.

V.

In reply to the Trustee's Point VI, that the Treaty of Berlin "has adopted into American law, for the benefit of our associates, the ratifications and covenants of the Treaty of Versailles," we say:

As we have shown in Point VIII of our brief, the Treaty of Berlin did not affect these shares at all, but if it has any effect it must be that of its own specific terms—to place these shares at the disposal of our Congress and our laws.

VI.

Only one nation can be sovereign over one thing.

The final reliance of our opponents must be the theory that these shares had a "secondary *situs*" in Great Britain. Such was the basis of the ruling of the court below.

All property within the territory of each Power belongs in *international law* to the sovereign. There is no room for ownership by two sovereigns. Therefore there can be no secondary *situs*. "Secondary *situs*" is but another name for "secondary sovereignty," which is a contradiction in terms. Either the United States is sovereign over these shares because the corporations are here or Great Britain is sovereign over them because the certificates were there. But to assert that both are sovereign, the one primarily and the other secondarily, is to state what contradicts the fundamental concept of sovereignty, for sovereignty within its domain admits of no qualification. Shares of corporations organized

under the laws of States have been held from the earliest times to be subject to the sovereignty of the State of their organization. This sovereignty is absolute, all-embracing, and complete, and there is no place for the exercise of any other sovereignty over them.

Respectfully submitted,

ALFRED K. NIPPERT.

JOHN WILSON BROWN, III,

JOHN WELD PECK,

Appellants' Attorneys.

(5090)

End



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Supreme Court of the United States.

OCTOBER TERM, 1924.

No. 676.

DIRECTION DER DISCONTO GESELLSCHAFT,

vs.

UNITED STATES STEEL CORPORATION, PUBLIC TRUSTEE,
EGREMONT JOHN MILLS, et al., Etc.,

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10
Appellant,

Appellees.

No. 677.

BANK FÜR HANDEL UND INDUSTRIE,

vs.

UNITED STATES STEEL CORPORATION, PUBLIC TRUSTEE, ENGLISH
ASSOCIATION OF AMERICAN BOND AND SHAREHOLDERS, LIMITED, et al.,

Appellant,

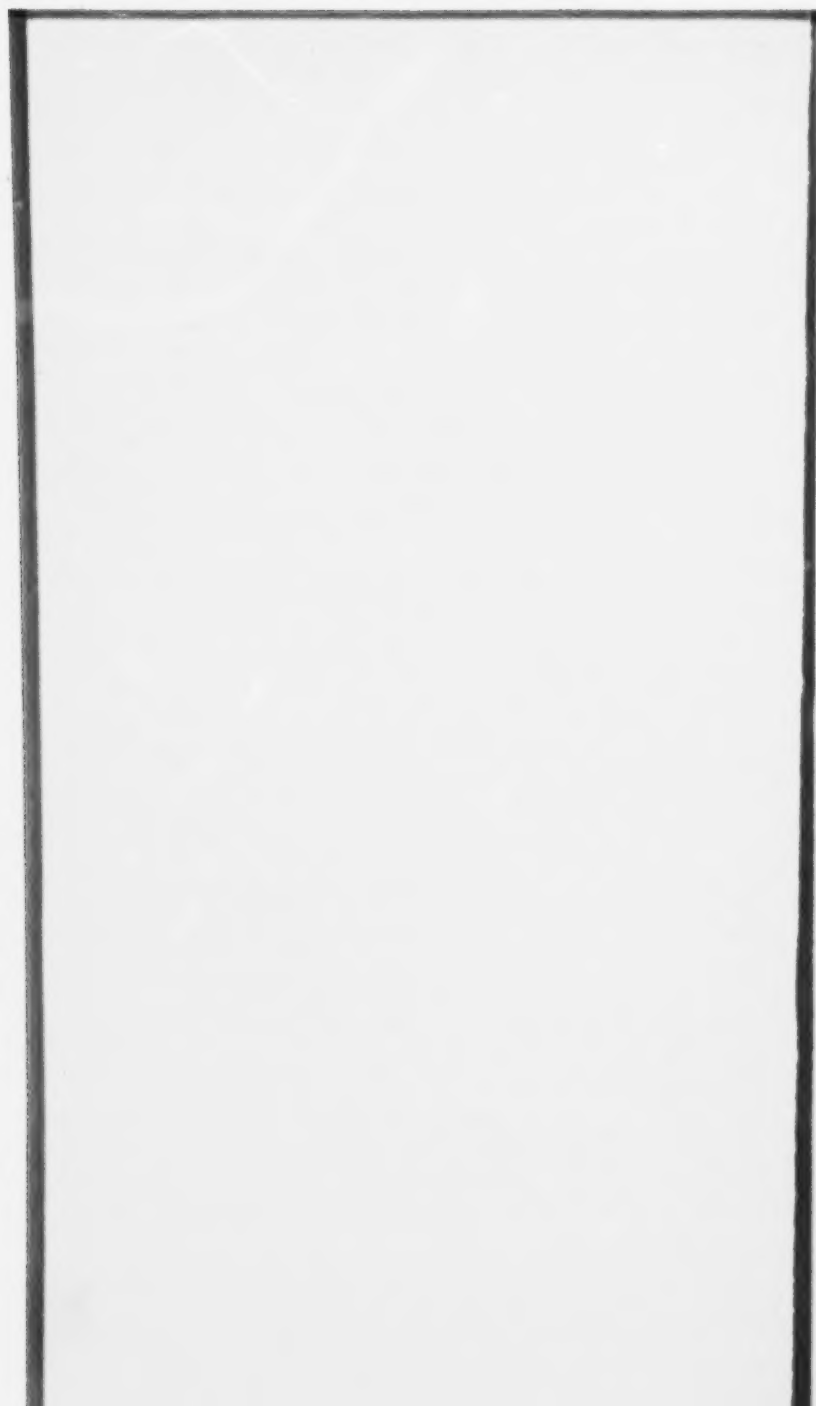
Appellees.

BRIEF FOR UNITED STATES STEEL CORPORATION.

KENNETH B. HALSTEAD,

WM. AVERELL BROWN,

Counsel for UNITED STATES STEEL CORPORATION.



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Appellees.

BRIEF FOR UNITED STATES STEEL CORPORATION.

Statement of the Case.

These are appeals from two decrees of the United States District Court for the Southern District of New York, which decrees, among other things, dis-

missed the appellants' bills of complaint and adjudged that the Public Trustee is the owner of, and is entitled to, the shares of stock of the United States Steel Corporation which are the subject of the litigation (Rec. pp. 134-136).

Each of the two actions was brought by a German bank against the United States Steel Corporation (hereinafter referred to as the "Steel Corporation"), the Public Trustee of Great Britain (hereinafter referred to as the "Trustee"), and the stockholders of record who, however, disclaim any interest in the controversy. Both actions are brought to remove a cloud upon the alleged title of the respective appellants to the stock of the Steel Corporation. Each suit involves 100 shares of the Steel Corporation's common stock.

The facts disclosed by the pleadings and by the evidence stipulated on the hearing are briefly as follows:

Prior to the outbreak of the war between Great Britain and Germany, in August, 1914, each of the appellants owned one hundred (100) shares of the common stock of the Steel Corporation which were represented by certificates physically located in Great Britain. The stock, however, was not registered in the names of the appellants, but was registered in the names of British brokerage firms or individual or corporate nominees. The certificates were outstanding in the names of these stockholders of record and had been endorsed by them in blank. There was a practice in Great Britain with respect to these certificates, and other certificates representing stock of American corporations, whereby the dividends when collected by the stockholders of record were distributed to the holders of the certificates upon presentation of the certificates

and the stamping on the back thereof of a "Dividend Claimed" stamp. It was also the practice to deliver and accept these certificates endorsed in blank (or with separate blank assignments attached) in fulfilment of sales and purchases of the stock, and frequently the ownership of shares passed through many changes covering periods of years before the certificates would be surrendered to the issuing corporation for transfer to a transferee other than a nominee stockholder of record. It is not admitted, however, that this practice constituted a custom, and, notwithstanding the practice, transfers were made at times from one record holder to another following sales of stock in Great Britain (Rec. pp. 65-68).

Some time after the outbreak of the war and prior to the conclusion of peace, the Trustee, acting in pursuance of British war legislation, and vesting orders issued thereunder, took possession of the certificates representing the shares of stock claimed by the appellants and still has possession of them (Rec. p. 67).

In the first case (the Disconto-Gesellschaft) the certificates at the time of the seizure were in the possession of the London branch of the appellant bank for safe keeping only (Rec. p. 66), and in the second case (Bank fur Handel) the certificates were in the possession of a London bank with which the appellant bank had an open running account (Rec. p. 65).

The Treaty of Versailles, concluding peace between Great Britain and Germany, came into force on January 10, 1920, and the Treaty of Berlin, concluding peace between the United States and Germany, came into force on November 11, 1921 (Rec. p. 68).

The appellant banks still remain the owners of this stock (Rec. pp. 2, 27), except in so far as their ownership may have become divested in favor of the Trustee, or in so far as the United States may have some interest therein under the Treaty of Berlin (Rec. pp. 9-11, 37-39).

No demand has been served by our own Alien Property Custodian affecting the stock involved in these suits (Rec. pp. 10, 38).

The District Court, in construing the Treaty of Berlin, held that the United States would be a proper, but not a necessary party defendant (Rec. p. 130), and proceeded to enter its decree in each suit on the merits.

The position of the Steel Corporation is that of a disinterested stakeholder as between the appellant banks on the one hand, and the appellee Trustee on the other; and, owing to the fact that these two adverse claimants are before the Court and ably represented by counsel, it will not be necessary for us to enter into a full discussion of the law and the facts which are involved on these appeals. We desire, however, to present to the Court a statement of our understanding of the issues between the claimants and a further statement of the issue respecting the possible interest of the United States.

BRIEF OF THE ARGUMENT.

I.

DID THE FACT THAT THE ENDORSED CERTIFICATES REPRESENTING THE STOCK OF THE UNITED STATES STEEL CORPORATION WERE PHYSICALLY LOCATED IN GREAT BRITAIN GIVE GREAT BRITAIN JURISDICTION OVER THAT STOCK, WITH THE RESULT THAT THE OWNERSHIP OF THE APPELLANT BANKS WAS DIVESTED AND TITLE TO THE STOCK WAS VESTED IN THE TRUSTEE EITHER (1) BY VIRTUE OF BRITISH WAR LEGISLATION, OR (2) BY VIRTUE OF THE VERSAILLES OR BERLIN PEACE TREATIES?....	PAGE 7
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II.

SHOULD THE BILLS OF COMPLAINT AND THE CLAIM OF THE TRUSTEE TO THE SHARES OF STOCK BE DISMISSED ON THE GROUND THAT UNDER THE TREATY OF BERLIN THE UNITED STATES HAS SOME RIGHT, TITLE OR INTEREST IN THE STOCK WHICH IS THE SUBJECT OF THE CONTROVERSY IN EACH OF THE TWO SUITS, AND

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ARGUMENT.

POINT I.

Did the fact that the endorsed certificates representing the stock of the United States Steel Corporation were physically located in Great Britain give Great Britain jurisdiction over that stock, with the result that the ownership of the appellant banks was divested and title to the stock was vested in the Trustee either (1) by virtue of British War Legislation, or (2) by virtue of the Versailles or Berlin Treaties?

We believe that there is no case deciding the precise question whether a foreign nation, as a war measure, has power to capture stock of an American corporation by seizure of the endorsed certificates which are located within the jurisdiction of that foreign nation. Therefore, counsel for the two claimants, the appellant banks and the appellee Trustee, in the citation of authorities in support of the claims of their respective clients resort to various cases which fall into two general classes, namely, (1) those cases like *Jellenik v. Huron Copper Co.*, 177 U. S. 1, and *Miller v. Kaliwerke*, 282 Fed. 746, which hold that the courts or sovereign of the domicile of a corporation have jurisdiction *quasi in rem* over the stock of that corporation, regardless of the location of the certificates representing the stock, and (2) those cases like *Simpson v. Jersey City Contracting Co.*, 165 N. Y. 193, on

the one hand, and *Christmas v. Biddle*, 13 Pa. St. 223, on the other, which discuss the question of whether or not stock of a foreign corporation is subject to attachment by the courts of the jurisdiction where the endorsed certificates representing such stock are physically located.

We shall not attempt either to cite or to analyze all the cases on this subject. We are, however, particularly interested in the New Jersey decisions which may have any relevancy to the question, because we entirely concur with the statement of the learned District Judge that the duties which should be imposed upon the Steel Corporation in this litigation should be "similar to those of the domicile of the corporation, New Jersey", and with his conclusion that as the Uniform Stock Transfer Act does not apply to the certificates which are involved, "the question as to who must be recognized as the shareholder is to be determined by the common law of New Jersey" (Rec. p. 130). We shall therefore summarize briefly certain New Jersey decisions which have some bearing on the questions involved in this litigation, although we desire to state at the outset that in our opinion none of the New Jersey decisions are directly in point.

The case of *Broadway Bank v. McElrath*, 13 N. J. Eq. 24, cited by the learned District Judge (Rec. p. 130), and the later case of *Reilly v. Absecon Land Co.*, 75 N. J. Eq. 71, hold respectively that a *bona fide* pledgee for value and a *bona fide* purchaser for value of endorsed certificates take precedence over attaching creditors of the record stockholders if the attachment proceedings are brought by notice served on the corporation after the delivery of the certificates to the pledgee or purchaser. However, we suppose that in the cases at bar it will not be

contended that the Trustee is a *bona fide* transferee for value of the endorsed certificates; and neither of the cited New Jersey cases indicate what the decision would have been if the holders of the endorsed certificates had acquired them by a proceeding *in invitum*, such as an attachment and sale under the decree of a foreign court or a seizure by a foreign sovereign under war legislation.

The action in the case of *Andrews v. Guayaquil & Quito Ry. Co.*, decided in the Court of Chancery (69 N. J. Eq. 211, 60 Atl. 568) and affirmed in the Court of Errors and Appeals (71 N. J. Eq. 768, 71 Atl. 1133) on the opinion delivered in the Court of Chancery by Vice Chancellor Stevens, was one to compel the transfer of stock of a New Jersey corporation. Robert C. Pruyn was made a party because the stock had been issued to him and he claimed an interest therein. He appeared specially and asserted that the property concerning which relief was sought was not located in the State of New Jersey; that he was a resident of the State of New York; and that no decree could be entered which would be enforceable against him. The Court, following the *Jellenik* case, held that the situs of the stock of a New Jersey corporation was in New Jersey, and that any question relating to it may be determined there.

In the case of *Amparo Mining Co. v. Fidelity Trust Co.* opinions were written both in the Chancery Court and in the Court of Errors and Appeals (74 N. J. Eq. 197, 71 Atl. 605; 75 N. J. Eq. 555, 73 Atl. 249). In this case also the action was one to determine the interest in shares of stock of a New Jersey corporation. Here again the *Jellenik* case was relied upon in arriving at a decision, and both courts held that the stock of the New Jersey corporation belonging to a resident of another state

has a situs in New Jersey, even though the certificates are not within that State. The Appellate Court affirmed the principle that choses in action are generally to be looked upon as situate in the country where they can be enforced; agreed with the view that shares of stock for purposes other than taxation and some similar purposes are personal property whose location is in the state where the corporation is created; pointed out that a complete and effectual transfer of the stock can only be made upon the books of the corporation in New Jersey; and held that all that the decree need do to effectuate the complainant's title would be to decree that the certificates in the hands of the defendant are null and void. As the question arose upon a special appearance of the defendant who had possession of the certificates and only the preliminary question of jurisdiction was raised, the exact form of the final decree was not considered. However, the Court intimated that the rights of a *bona fide* holder of the certificates would be protected, and we assume that this would have been accomplished by requiring the prevailing party to furnish a bond of indemnity in accordance with the views expressed in Cook on Corporations, Eighth Edition, Sections 404 and 405.

In the case of *Cord v. Newlin* (71 N. J. L. 438; 59 Atl. 22) the Court of Errors and Appeals gave an advisory opinion holding that under the New Jersey statute stock in a New Jersey corporation can be attached by notice to the corporation, even though the certificate of stock is outside of the State. The Court points out in its opinion that under the corporate charter a complete formal transfer of the stock can be effected only by an entry on the books of the corporation; that the certificate is only evidence of title to the right; that the

substance of the right is at the domicile of the corporation; and reaches the conclusion that when corporate stock is so far subject to the control of the corporation that its formal transfer cannot be perfected without the action of the corporation, process of garnishment may be effectually served upon the corporation at its domicile. The Court expressly refrains from considering what effect this may have upon the title of a subsequent *bona fide* purchaser for value.

See also the following New Jersey cases:

Sohege v. Singer Mfg. Co., 73 N. J. Eq. 567, 68 Atl. 64;

Bijur v. Standard Distilling & Distributing Co., 74 N. J. Eq. 546, at 556-557, 70 Atl. 934; affirmed 78 N. J. Eq. 582, 81 Atl. 1132;

Neilson v. Russell, 76 N. J. L. 27, 655; 69 Atl. 476, 71 Atl. 286;

Morris v. Hussong Dyeing Machine Co., 81 N. J. Eq. 256, at 260; 86 Atl. 1026, at 1028;

Lockwood v. Evans, 88 N. J. Eq. 530, at 535; 102 Atl. 19, at 21; affirmed 103 Atl. 1053;

Security Trust Co. v. Edwards, 90 N. J. L. 558, at 564; 101 Atl. 384, at 386;

Wall v. American Smelting & Refining Co., 91 N. J. Eq. 131, at 134; 108 Atl. 235, at 236;

Lask v. Bedell, 91 N. J. Eq. 341, at 343; 109 Atl. 849, at 850.

Some of the language which is found in these New Jersey cases may read in favor of the contention made by the appellant banks, but we doubt

if these New Jersey cases go any further in holding that stock of a corporation is located at the domicile of the corporation, than do the *Jellenik* and *Kaliwerke* cases. Therefore, if Judge Hand is correct in his statement that, although the *Jellenik* case is often cited to show that corporate shares can have no situs except at the domicile of the corporation, it holds nothing of the sort, but only that they do have a situs there (Rec. p. 132), his distinction probably applies with equal force to the New Jersey cases to which we have referred.

In the case of *Grizwold v. Kelly-Springfield Tire Co.*, 94 N. J. Eq. 308; 120 Atl. 324, the Vice Chancellor cites both the case of *Simpson v. Jersey City Contracting Co.* (*supra*) and *People ex. rel. Wynne v. Griffenhagen*, 167 N. Y. App. Div. 572. It might therefore be argued that in his opinion these New York cases permitting attachment on the basis of the situs of the certificates are not in conflict with the New Jersey law, but the actual decision is far from affirming the doctrine of the New York courts. The conflict was between administrators of the estate of a decedent who, at the time of his death, owned stock of a New Jersey corporation registered in a name other than that of the decedent, the certificates being endorsed in blank by the stockholders of record. The complainants were administrators who had been appointed by the courts of Ohio, which was the domicile of the decedent, and one of the defendants was the administrator who had been appointed by the Surrogate's Court of New York County, where the certificates were physically located. The other defendant was the New Jersey corporation. The New Jersey Chancery Court refused the relief sought by the Ohio Administrators who asked that the New Jersey cor-

poration be required to transfer the stock to them upon its books, and for an injunction to prevent the sale by the New York administrator. The Court points out that the ownership of the stock was in the estate of the decedent and that the strife between the two sets of administrators was simply for the privilege of administering the stock. It expressly states that if the ownership of the stock had been involved, the Court would have settled the title because the property had its location in New Jersey. This case, therefore, cannot be regarded as authority for the proposition that the New Jersey courts would recognize attachment, in a foreign jurisdiction, of certificates of stock of a New Jersey corporation, particularly as the Vice Chancellor, after stating that certificates are deemed personal property which may be levied upon by attachment, goes on to say that they are thus regarded by the courts of the State of New York, and thereby admits, by implication at least, that he has found no authoritative decision on the subject by the New Jersey courts.

Judge Hand, in his opinion, decides that in this litigation there is no conflict of jurisdiction over the stock between the sovereign of the domicile of the Corporation and the sovereign having physical jurisdiction over the endorsed certificates. He therefore declines to suggest what would be the result of such a conflict. It would, however, raise an interesting question if there should be concurrent seizures or attachments of stock, one at the domicile of the Corporation, and the other within the jurisdiction where the endorsed certificates were located, and the parties claiming under the respective proceedings should each set up their alleged ownership in the stock. The framers of the

Uniform Stock Transfer Act have endeavored to avoid this dilemma for the future (see Section 13, Chap. 191, Laws of New Jersey, 1916). However, the courts have held that the war powers of the Federal Government override this Act (see *Miller v. Kalincerke* (*supra*), 283 Fed. 746, 751), and therefore the possibility of a conflict between the sovereign of the domicile of a corporation and the sovereign having possession of the certificates of stock will remain open, at least with respect to war legislation.

Because of our special interest in the New Jersey law, we have called the Court's attention to certain New Jersey decisions which may have some bearing on the questions involved. We do not, however, intend to indicate whether these decisions are favorable to one claimant or the other. That is a question with which we are not concerned.

We understand that the Trustee makes the claim that even if he did not acquire title to the stock under his original seizure of the certificates pursuant to war legislation, his title has since been confirmed under the Treaty of Versailles and the Treaty of Berlin; and further, that under these treaties these appellants are barred from maintaining these suits. The discussion of this question we shall leave entirely to counsel for the respective claimants.

POINT II.

Should the bills of complaint and the claim of the Trustee to the shares of stock be dismissed on the ground that under the Treaty of Berlin the United States has some right, title or interest in the stock which is the subject of the controversy in each of the two suits, and the Court therefore is without jurisdiction to grant relief to either of the claimants to such stock?

This point is raised by the Steel Corporation's "First Separate and Distinct Defense" appearing in paragraphs "13" to "17", inclusive, of its answers (Rec. pp. 9-11, 37-39). It was also duly raised by a motion made by the Steel Corporation at the trial (Rec. p. 56). As this point raises a question of the Court's jurisdiction, it is a matter which the Court would have to consider on its own motion, whether or not called to the Court's attention by any of the parties (21 C. J. 328).

There is no doubt but that under paragraph "(b)" of Article 297 and subdivision "9" of the Annex to Article 298 of the Treaty, the United States had the right not only to retain all property in the hands of the Alien Property Custodian, but also to retain and liquidate all property within the territory of the United States belonging, at the date of the coming into force of the Treaty, to German nationals, including the stock involved in this litigation.

This paragraph and subdivision were part of the Versailles Treaty, but were incorporated into the Berlin Treaty for the benefit of the United States by Articles "I." and "II." of the Berlin Treaty. The relevant portion of paragraph "(b)" and the whole of subdivision "9" read respectively as follows:

"(b) Subject to any contrary stipulations which may be provided for in the present Treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights and interests belonging at the date of the coming into force of the present Treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates, including territories ceded to them by the present Treaty.

The liquidation shall be carried out in accordance with the laws of the Allied or Associated State concerned and the German owner shall not be able to dispose of such property, rights or interests nor to subject them to any charge without the consent of that State."

"9.

Until completion of the liquidation provided for by Article 297, paragraph (b), the property, rights and interests of German nationals will continue to be subject to exceptional war measures that have been or will be taken with regard to them."

If this stock belonged to the appellants, the rights of the United States under this paragraph of the Treaty are self-evident.

Even if it should be held by this Court, as it was held in the Court below, that the Trustee had previously acquired title to this stock, and that therefore the United States could claim under the Berlin treaty only as grantee of the appellants, the Trus-

tee's title could be divested by the United States under this Treaty provision. The doctrine of the *Kaliwerke* case (*supra*), 283 Fed. 746, sustaining the right of seizure by the Alien Property Custodian as against the Trustee, who had possession of the certificates, would apply equally to any government official who might be appointed pursuant to this Treaty provision to seize this stock, notwithstanding the prior seizure of the certificates by the Trustee. It seems incongruous that Great Britain, whatever its rights against the pre-war German owners, by seizing the certificates of stock of an American corporation, can acquire a right to use the proceeds of this stock to pay the claims of British nationals, superior to the right of the United States under the Treaty to seize this same stock of an American corporation for the purpose of paying the claims of American nationals. The rights of the United States to this German owned stock of an American corporation are still superior to the rights of the British Government, notwithstanding the fact that the rights of the United States now depend on the treaty provisions instead of the exercise of its war powers.

The fact is, however, that the United States has not proceeded under this paragraph of the Treaty, and it will therefore be claimed by both the appellant banks and the Trustee that the United States is not interested in this proceeding. Great Britain did in fact proceed promptly under this paragraph of the Treaty, and two interesting decisions showing the result of this action will be found in the cases of *Stoeck v. Public Trustee*, 2 Chancery (1921) 67, and *Kramer v. Attorney General*, Appeal Cases (1923) 528, the first case being that of an individual who had no nationality, and the sec-

ond case being that of an individual who had both German and British nationality.

Another interesting case is *Rand Fontein Estates v. Custodian of Enemy Property*. (South African Law Reports, App. Div. 1922-1923, p. 576.) The decision in this case shows the effect of the action taken in South Africa under this paragraph of the Peace Treaty. The Governor General issued a proclamation in the year 1921. The exact date thereof does not appear in the opinion, but it was presumably not issued until at least a year after the effective date of the Versailles Treaty, which was January 10, 1920. Under this proclamation all companies carrying on business in the Union of South Africa were obliged to notify the Custodian of Enemy Property respecting all bearer shares, bearer bonds or debentures issued to bearer, on which dividends or interest had not been paid since the outbreak of the late war to a lawful holder who was solely the subject of a power not at war with His Majesty at any time during 1918. The Custodian was then empowered to determine whether or not these securities were at the time of peace the property of German nationals, and if he was satisfied that these securities were the property of German nationals at the time of peace, he could require the corporation to hold the same at his disposal, and thereupon the same would be liquidated by him. On February 22, 1922, the Custodian required the defendant company to hold certain shares and debentures at his disposal in pursuance of the proclamation, and required it to issue new certificates to him as well as duplicates of all unpaid coupons in respect thereof. The company refused to comply with this demand and the action was brought by the Custodian. The Custodian was

successful both in the court of original jurisdiction and on appeal. This case has been cited by the appellants in support of their contention regarding the situs of stock. The only reason why we refer to it is to show that it has been held by an Appellate Court within the jurisdiction of the British Empire that a demand served on a corporation two years and two months after the effective date of the Versailles Treaty, which demand was issued pursuant to proclamation promulgated a year after such effective date, is effective to vest in the government of the domicile of the corporation the title to the stock of that corporation, which the Custodian found to belong at the date of the Treaty to a German national. Although the point is in no way involved in the decision, we feel reasonably certain from a reading of the opinion that the result would have been the same if some of the bearer certificates there involved had been taken possession of by the American Alien Property Custodian under our Trading with the Enemy Act.

It is true that no legislation under this paragraph of the Berlin Treaty has been enacted by Congress for over three years since the taking effect of the Treaty and it may be urged that, not only by Congress's inaction in seizing more enemy property under the Treaty, but by its action in returning part of the property already seized under our Trading with the Enemy Act, it has evidenced the intention of the United States to waive this right of liquidation.

But as of what date did the United States lose or waive its right to liquidate this stock of the Steel Corporation owned by German nationals in 1914, and, except for the Trustee's claim, still owned by them on November 11, 1921, and down to the pre-

sent time? Certainly the right was not waived or lost on November 12, 1921, the day after the effective date of the Peace Treaty. The right certainly was not lost a year later if we can rely on the *Rand Fontein* case. Can it be said that the right has been waived or lost three years after the effective date of the Treaty, and if so, why? There is nothing in the Treaty itself which fixes any time limitation within which this right may be exercised. Indeed, it would appear from a reading of the Treaty that no time limitation whatever was intended, for in granting certain other rights to the United States, a time limit was in fact fixed. (See Section 7 of the Annex to Article 298, and Section (c) of Article 296.) The doctrine of *expressio unius est exclusio alterius*, therefore, seems to apply.

Paragraph (b) says that the German owners shall not be able to dispose of this stock or subject it to any charge without the consent of the United States. When did Congress give its consent? We know of no rule of law whereby Congressional silence in a case of this kind shall be construed by the courts as the equivalent of Congressional consent.

Looking at Paragraph (b) from the viewpoint of the Steel Corporation, as of what date can it be said that the Steel Corporation, with actual knowledge of the ownership of the German plaintiffs, might properly permit a transfer of this stock? Certainly if with this knowledge a transfer had been permitted in the interest of either claimant on November 12, 1921, and Congress had shortly thereafter proceeded to exercise the rights of this Government under Paragraph (b), the Steel Corporation could properly have been accused of ignoring the rights of its own national Government, and perhaps might even have incurred liability to the Government.

The United States cannot be compelled by the courts to take any action under the Treaty. It cannot be made a party defendant in this action without its consent. See *U. S. v. Clarke*, 8 Peters, 436 at page 443, and many decisions to the same effect since that time. However, in certain cases a stalemate necessarily results from a sovereign's immunity from suit. See *Cunningham v. Macon, etc., R. R. Co.*, 109 U. S. 446; *Christian v. Atlantic, etc., R. R.*, 133 U. S. 233.

We are not unmindful of the fact that Paragraph (b) is not a self-operating provision of the Treaty in one sense of that term. Further legislation by Congress is necessary to give the United States Government, or any officer thereof, authority to liquidate the property. (See *Foster v. Neilson*, 2 Peters, 253, at pp. 314-315). This provision is, however, self-operating in the sense that it creates what may be termed an inchoate right in the United States to retain and liquidate this property. Also, that portion of the Treaty which prohibits transfer by the German owners without the consent of the United States is certainly self-operating.

If this Court should disagree with the learned District Court in its construction of the Berlin Peace Treaty and should decide that there are rights of the United States in the stock which cannot be disregarded, the next question is, can the Court, nevertheless, grant some relief as between the parties to this suit?

If the United States is an indispensable party, it follows that the bill of complaint must be dismissed. See *Louisiana v. Garfield*, 211 U. S. 70, at page 78, and the *Christian* and *Cunningham* cases (*supra*). In these cases, however, the sovereign

had a present title or claim to the property, whereas, in our case, the sovereign has no title or claim at present, but only a right to enact legislation which would create a title or claim. A middle course is suggested by the language of Rule XXXIX of the Equity Rules and such decisions as *Waterman v. Canal-Louisiana Bank Co.*, 215 U. S. 33. See also 21 C. J. 347-348; *Foster's Federal Practice*, Secs. 117, *et seq.*, and the Court's remarks in the *Cunningham* case (*supra*) at pages 456-457.

If this Court should decide that the decree in the District Court should have been entered in favor of one or other of the claimants, but without prejudice to the rights of the United States, two subsidiary questions arise:

1. Should not the Steel Corporation, in issuing certificates representing the stock in the name of the prevailing party, or a nominee, insert therein an appropriate notation indicating that the stock is subject to the rights of the United States? This would seem to be the proper practice in order that a possible purchaser of the stock represented by the certificates should not be misled. A somewhat similar practice is indicated in the *Columbia Browning Company v. Miller*, 281 Fed. 289, at page 293.

2. May the Steel Corporation pay to the prevailing party the dividends heretofore unpaid and the dividends which may hereafter accrue until the United States exercises its rights under Paragraph (b), or appropriately waives such rights? It seems to us that the answer to this question depends on whether, if the United States should exercise its rights under Paragraph (b), its seizure of the property for purposes of liquidation will be retroactive.

POINT III.

What is the correct *ratio decidendi* of these appeals?

If this Court should reverse the District Court and award the stock to the pre-war German owners, it should be borne in mind that such a result is possible only because these actions were commenced while the certificates were still in the possession of the Trustee and before the Steel Corporation had made any transfer of the shares on its books or issued new certificates to other parties. We respectfully submit that, if the Steel Corporation had transferred the shares and had issued new certificates to other persons in reliance upon the surrender of the duly endorsed certificates and without notice of the appellants' claim, the appellants would have had no cause of action whatsoever against the Steel Corporation. This point is made because of the fact that, as appears from the record in this case, the Trustee has in the past sold some certificates of stock of American corporations (Rec. p. 69), and the Steel Corporation itself has transferred a considerable amount of stock and issued new certificates to the transferees upon surrender of the outstanding certificates, and has later been advised by the pre-war owners that the transferred stock was claimed by them and that the certificates which had been surrendered upon the transfer had been seized by the Trustee.

Certainly an owner of stock who failed to have the stock registered in his own name, and permitted the certificates to remain in England or elsewhere in the names of nominees, has no cause for complaint against an American corporation, if, upon

notifying the corporation of his interest for the first time months or years after the termination of the war, he finds that the corporation has transferred the stock upon surrender of the outstanding certificates with a proper endorsement or assignment by the record stockholder. Any contrary view would make it necessary for a corporation to bring a proceeding *in rem* to determine the title of stock as against the world before it could safely make any transfer.

If, on the other hand, this Court affirms the decree of the District Court, the grounds of the decision will likewise be applied to many other cases of stock claimed by pre-war German owners. The question will arise, did the mere existence of the endorsed certificates in Great Britain give that nation power to acquire the stock of the Steel Corporation as against all the world (except the rights of the sovereign of the domicile of the corporation which were not exercised in these cases), or did that power depend in some degree upon the fact that the stockholders of record were British subjects, or that they endorsed the certificates in England? Judge Hand's opinion does lay some emphasis upon the nationality of the record stockholders and the effect of the laws of Great Britain where the act of endorsement or assignment in blank presumably took place.

It is not our function on these appeals to criticise either the result or the grounds of the District Court's opinion, but it may not be amiss to suggest that, if the rights of the holder of an endorsed certificate depend upon the laws of the domicile of the record stockholder or the laws of the place where the endorsement or assignment of the stock is made rather than upon the laws of the corpora-

tion's domicile, there is likely to be some uncertainty as to the rights of such holder, and possibly some further uncertainty as to the rights of a corporation to transfer its stock upon the surrender of an endorsed certificate.

There is pending at the present time in the New Jersey Chancery Court an action brought by a pre-war German owner of stock against the Steel Corporation and the Trustee which, as far as we have been able to ascertain, is similar in all respects to the *Disconto Gesellschaft* case now before this Court, except that on a preliminary motion in the *New Jersey* case the counsel for the pre-war German owner claimed that his case could be distinguished from Judge Hand's decision in these cases in the District Court by reason of the fact that his client's stock was registered in the names of New York brokers and his certificates had been endorsed in blank in New York City and had been shipped to England where they were awaiting further shipment to his client in Germany when the war broke out and they were seized by the Trustee.

If, in default of seizure by the United States at a corporation's domicile, Great Britain's seizures of endorsed certificates are effective seizures of the stock of American corporations as against all the world, it may be interesting to note that, although the British Trading with the Enemy Acts have no section corresponding with Section 9 of our own Act, which provides for the return of non-enemy property, yet a reading of the British cases indicates that a resort to the British courts by suit against the Trustee affords substantially the same relief for the correction of improper seizures by the Trustee as is afforded under our own Section 9,

and that therefore a non-enemy could doubtless secure the return of his certificates in Great Britain if they had been improperly seized under the British Acts.

As stated at the outset of this brief, the Steel Corporation has no interest in the outcome of this controversy as between the two adverse claimants. We trust that in writing this brief we have maintained an impartial viewpoint, because it is certainly not our intention to favor either claimant as against the other.

Dated, New York, January 2, 1925.

Respectfully submitted,

KENNETH B. HALSTEAD,
WM. AVERELL BROWN,
Counsel for United States
Steel Corporation.

(2)

Office of the Secretary of the U. S.

RECEIVED

JAN 5 1925

SUPREME COURT OF THE UNITED STATES

STANBURY
CLERK

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Supreme Court of the United States

OCTOBER TERM, 1924.

DIRECTION der DISCONTO-GESELLSCHAFT, a corporation,
Appellant,

vs.

UNITED STATES STEEL CORPORATION, a corporation;

PUBLIC TRUSTEE, a corporation;

EGREMONT JOHN MILLS, WALTER CLARKE, MORRIS NATHANIEL JULIUS and DONNELL SHEPARD POST, co-partners, trading as Marks, Bulteel, Mills & Co.,

Appellees.

No. 676.

BANK fur HANDEL und INDUSTRIE, a corporation,
Appellant,

vs.

UNITED STATES STEEL CORPORATION, a corporation;

PUBLIC TRUSTEE, a corporation;

ENGLISH ASSOCIATION OF AMERICAN BOND & SHAREHOLDERS, LIMITED, a corporation;

LONDON & LIVERPOOL BANK OF COMMERCE, LIMITED, a corporation;

HERBERT HOPKINS, individually and as liquidator of London & Liverpool Bank of Commerce, Limited; and

VIOLET GERTRUDE FRASER, as executrix of the Will of Thomas Fraser, deceased,

Appellees.

No. 677.

BRIEF ON BEHALF OF APPELLEE. PUBLIC TRUSTEE.

Nature of the Suits.

These are appeals by plaintiffs, German bankers, from decrees in two suits in the United

States District Court in and for the Southern District of New York, which determined that the appellee, Public Trustee, as Custodian of Enemy Property for England and Wales, is the legal owner of certain shares of stock in the United States Steel Corporation represented by certificates duly endorsed in blank, which were located in Great Britain during the late war, and were taken over by the Public Trustee on behalf of the British Government pursuant to the British Trading with the Enemy Acts and Vesting Orders thereunder, and the taking of which was ratified and confirmed by the Treaties of Versailles and Berlin and the legislation giving effect thereto.

The appellants, German bankers, sought through these suits to obtain an adjudication that they were the owners of said shares of stock, and entitled to be registered as such, and to remove as a cloud upon their alleged title the adverse claim of the Public Trustee. The Public Trustee, as Custodian of Enemy Property for England and Wales, claimed the stock by virtue of the possession and ownership of the endorsed certificates thereof, which certificates came into his possession by the operation of the British law and the decree of the British courts and authorities empowered by such law to vest in him such ownership. The Public Trustee further claimed title to the said stock by virtue of the provisions of the Treaties of Versailles and Berlin, by which the German Government transferred the same to Great Britain to be sold, and the proceeds credited to Germany, and applied in partial payment of the obligations of

Germany and her nationals to Great Britain and her nationals arising out of the late War.

The United States Steel Corporation, a New Jersey corporation having an office in New York, submitted the matter to the judgment of the court upon the agreed facts. The other appellees claimed no actual interest but were made parties because of apparent rights as stockholders of record or otherwise.

The parties agreed upon a statement of facts covering both suits and the trial below before the Honorable Learned Hand, then United States District Judge, was conducted thereon and resulted in the decrees in favor of the appellee Public Trustee, from which these appeals are taken.

The decrees of the District Court were based primarily upon the propositions that certificates of stock duly endorsed in blank are property having a *situs* where the certificates are found and that the title to the shares represented thereby follows the legal ownership of such endorsed certificates, which is in the Public Trustee.

As the right of the Public Trustee was based in part upon the ratifications contained in the Treaty of Versailles referred to and adopted into the Treaty of Berlin, all as particularly set forth in the amended complaints and answers herein, direct appeal to this Court from the decrees of the District Court was proper.

Statement of Facts.

All the facts have been agreed upon and it will be unnecessary here to do more than summarize them.

At the outbreak of the Great War, the plaintiffs, German bankers, maintained branch offices in London and were there carrying on a banking business (R., p. 65). In the course of such business, they held these and similar certificates representing shares of the capital stock of the defendant Steel Corporation, as well as of other American corporations. All of the shares forming the subject matter of both suits were endorsed in blank and were held for the account of the respective plaintiffs (R., p. 66).

The stock involved in the second suit, registered in the names of Herbert Hopkins and Thomas Fraser, was held "in an open running account of stock bought and sold, and of credits and debits because of such sales and purchases and other receipts and disbursements," and was subject to the adjustment of such accounts, a debit balance showing in favor of the English bankers (R., p. 65). Appellants contend (Brief, p. 9) that this indebtedness "in no wise affects the shares in suit," because it has been discharged since the vesting order and the English bank therefore makes no claim to the shares (R., p. 26). But the existence of the indebtedness at the time of the vesting created under English law a lien upon the shares in favor of the English bank as pledgee (R., p. 63).

At the outbreak of the War, all of the certificates were physically in London, either in the possession of the plaintiffs, or of British bankers holding for their account. None of the shares claimed by the German bankers was registered in their own names and their claims to the shares therefore depend upon the original delivery of

the endorsed certificates to them, and the possession thereof by them or for their account (R., pp. 65, 66).

After the outbreak of the War, the British Parliament enacted the various acts cited together as "Trading with the Enemy Acts," all of which are set out in the Statement of Facts. Under such laws, the British Public Trustee was duly appointed to be the Custodian of Enemy Property, and is still such Custodian (R., p. 66).

In pursuance of these laws and of the vesting orders or decrees of the High Court of Justice or of the Board of Trade, as provided in the Trading With the Enemy Acts of 1918 said Trustee took possession of the stock certificates in question, which certificates remain in his possession (R., p. 67).

Said vesting proceedings all took place after the enactment of the Trading with the Enemy Acts and prior to the Treaty of Peace between Great Britain and Germany, and they, and all action by the Public Trustee and all persons within the British Isles respecting said certificates were admittedly "regular and lawful under the laws of England" (R., p. 67).

The record shows that it was the usual practice in Great Britain to register American stock certificates in the name of certain well-known banks or brokerage firms, usually resident in Great Britain. Such registered holders endorsed the certificates in blank and they were, as so endorsed, delivered and accepted in fulfillment of sales and purchases of stock, frequently passing through many changes covering periods of years without surrender of the certificates themselves

to the company for transfer (R., pp. 67, 68). These certificates have stamped upon them by the British Fisc, the stamp which the Finance Act requires shall be placed upon bearer certificates (R., pp. 58, 64, 70).

The Treaty of Versailles was duly ratified and became effective on the 10th of January, 1920. The Treaty of Berlin concluding peace between the United States and Germany was duly ratified and became effective on November 11th, 1921. In accordance with identical provisions in both of these Treaties, all acts of the British Public Trustee in making seizures of enemy property were confirmed and validated, and the High Contracting Parties stipulated that no claim or action should be made or brought against any Allied or Associated Power or person acting under such authority in regard to such property by any national of Germany (R., p. 68).

The Treaties of Versailles and Berlin are and each of them is a part of the law of Germany (R., p. 70).

Some of the certificates of stock in American corporations other than those involved in these suits have been sold by the Public Trustee and the proceeds of sale have already been credited to and accepted by Germany under the provisions of the Treaty of Versailles. In some instances, Germany has made payment to its national whose certificates of stock were so vested in and sold by the British Public Trustee, the proceeds having been credited to Germany in accordance with the Clearing Office system stipulated in the Treaty (R., p. 69).

After the conclusion of peace between the United States and Germany, the plaintiff bank-

ers demanded of the Steel Corporation that such Corporation refuse to transfer upon its books the stock represented by the certificates vested in the Public Trustee, and that the Corporation enter the plaintiffs as the owners of record of the shares of stock represented by the said stock certificates so held by the Public Trustee. Upon the refusal of such demand these suits were instituted (R., p. 69).

The position of the British Public Trustee as Custodian is, that the said endorsed certificates held in England by, or for the account of, the plaintiffs, constitute property or a property right or interest situate in Great Britain subject to British law and that he alone is entitled to registration on the transfer book of the Corporation as owner of the certificates which by operation of said law had become vested in him. He insists, further, that by virtue of the Treaties both of Versailles and Berlin the action of the British authorities in regard to this property has been ratified and confirmed, and that he is the owner of said certificates and of such shares of stock in the United States Steel Corporation as well by virtue of the seizure and vesting under the British law as by the acquiescence and agreement of the Governments of Germany, Great Britain, and the United States as provided in the said Treaties. The German Government has moreover itself recognized the legality of his possession and ownership by receipting for the proceeds of similar stock heretofore sold and by compensatory payments made to its nationals on account of the proceeds of such stock, all of which was provided for in the present German Constitution and legislation (R., pp. 112 and 113).

The American Alien Property Custodian has never made any claim to these securities (R., pp. 2, 5, 12, 19, 28, 33, 41, 49).

It is agreed between the parties hereto that the Treaty of Versailles was and is within the judicial knowledge of the Court and may be referred to and quoted at length by the parties herein with the same force and effect as though set forth at length (R., p. 64).

Appellants' quotations in their statement of facts from the British Trading with the Enemy Acts and Treaty legislation (Appellants' Brief, pp. 10 and 11) are necessarily fragmentary. We shall content ourselves with a reference to the relevant portions of the Treaties and legislation, at the appropriate points in our argument herein.

The Questions Here Involved.

(a) Was the vesting of the endorsed certificates in the Public Trustee, in compliance with the British law, a valid transfer of the certificates with the consequent right in the Trustee or his nominee upon surrender of such certificates to the defendant Company to receive new certificates as the registered owner of the stock?

(b) Was the seizure and vesting of the right, title and interest in said shares by the British authorities, whether valid or not, so ratified and confirmed by the Treaties of Berlin and Versailles as to entitle defendant Public Trustee to be so registered?

(c) Can any relief be granted to appellants in these suits, or are they barred by the provision

of the Treaty of Berlin and the Treaty of Versailles that no claim may be brought by any German national in respect to any act done with regard to his property rights or interests during the War under the authority of any Allied or Associated power?

Brief of the Argument for the Public Trustee.

A.

The appropriation by the Trustee, in conformity with the vesting orders, of the endorsed certificates situated either in German Branch Houses, or in British Banks or Companies, effected a transfer of the certificates of stock to the Trustee entitling him, upon presentation and surrender of such certificates to the American Companies, to have new certificates issued to him, because:

(1) The seizure by authority of the Board of Trade, or of the British courts, was in compliance with the existing English law as admitted by the complaints and Statement of Facts.

(2) The endorsed certificates had a *situs* in England, which *situs* gave jurisdiction to the British sovereignty, as expressed through British law, to transfer the certificates and the shares represented thereby.

(3) The English law, the New Jersey law, the New York law, and the general rule of commercial law prevailing in the courts of the United States regard endorsed certificates as property

capable of transfer by manual delivery like chattels. They are held in this respect in the same legal category as bonds or promissory notes or other documents transferable by delivery under the Law Merchant, to wit: not mere evidences of indebtedness, but vendible symbols of the property itself, possessing intrinsic value, not extrinsic utility merely.

B.

The Treaty of Versailles, operative directly upon both the British and German Governments as upon British and German nationals, has expressly ratified and confirmed the action of the British authorities in taking possession of and transferring the stock in question.

C.

The German Government possesses the power, as an attribute of sovereignty recognized by international law, to devote the property of its nationals, wherever situate, to the termination and settlement of the War. This power in the nature of Eminent Domain finds numerous precedents in modern times as exemplified in Treaties entered into by the United States and has been sustained by this Court. It is recognized by authorities on international law generally and by the practice of civilized states.

(1) The German Government in accordance with modern usage has by the very terms of the Versailles Treaty obligated itself to compensate its nationals for their property so devoted to the public use of the German nation.

(2) The German Government in pursuance of its Treaty Agreement has received and receipted for proceeds of sale of some securities similarly situated to those denominated in these test suits, which proceeds have been credited through the German Clearing Office to the German Government in accordance with the provisions of the Treaty.

(3) The German Government has already made certain payments to its nationals on account of some securities similarly situated and the proceeds of which were heretofore credited to Germany. This action confirms the Treaty provisions and further ratifies and recognizes the action of the British Government in acquiring the certificates.

D.

The Versailles Treaty prohibits any "claim or action against any Allied or Associated Power, or against any person acting on behalf of, or under the direction of any legal authority or Department of the Government of such a Power *by Germany or by any German national wherever resident* in respect to any act or omission with regard to his property rights or interests during the War, or in preparation for the War." That Treaty further provides that "no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws, or regulations of any Allied or Associated Power."

Hence no such suit as this will lie at the instance of a German national. Such a treaty provision is at least the equivalent of "a covenant not to sue" in private law.

E.

The Treaty of Berlin in adopting the above mentioned provisions of the Versailles Treaty, thus making them "the law of the land," has, under the principles of international law as embodied in the decisions of our Courts, thus adopted into American law, for the benefit of our Associates in the late war as against Germany and its nationals, the ratifications and covenants of the Treaty of Versailles.

Appellants' Position as Disclosed by their Brief Herein.

To the foregoing propositions of the British Public Trustee, the appellants German Banks reply that:

(1) "The test of jurisdiction *in rem* over shares of stock is the power of effective control. This necessarily includes power over the corporation itself to enforce the complete and effective transfer in form and in fact of such shares in accordance with the judgment of the sovereign unaided by any other sovereign. Shares, therefore, cannot be captured except at some domicile of the corporation where such transfer can be enforced. The presence of such endorsed certificates is not enough." (Appellants' Brief, page 36). . . . "The Trustee could not seize the shares by seizure of the certifi-

cates, but mere possession of certificates confers no right in the shares under our municipal law nor under the municipal law of England." (Appellants' Brief, page 58.)

Appellants further urge:

(2) "No confirmations of the Treaty of Versailles apply because: (a) they are limited to property within the respective nations by the terms of the treaty itself, and (b) the treaty itself for its own purposes defines shares of stock as property at the domicile of the corporation." (Appellants' Brief, page 64.)

That the British law and judicial decrees thereunder transferred the endorsed certificates themselves to the Trustee is admitted by appellants.

"Insofar as the order purported to act upon the certificates it was valid and effective even though the owners were not within the jurisdiction since the certificates were; insofar as the order purported to act upon the shares it was ineffective since the shares were not within the territorial jurisdiction." (Appellants' Brief, page 57.)

The reply of the British Trustee which will be developed in the body of this brief may be summarized as follows:

The appellants overlook or avoid the cardinal fact that they themselves are not the registered owners of the certificates. Their claim to ownership of the shares is based upon the fact that the endorsed certificates were transferred to them in England in the ordinary course of business, by manual delivery to some representative or

agent there. They never even requested registration with the corporation prior to the proceedings herein.

The whole transaction which conferred upon them the rights which they possessed before the outbreak of the War and which they still claim to retain, despite the vesting orders and Treaty provisions, was itself consummated from start to finish in England under English sovereignty. The transfer to them was hence affected by the same alleged "incompleteness" with which they charge that the rights of the Trustee are affected; in either case registration could only be effected at the domicile of the corporation.

The Public Trustee therefore submits, as the Court below has held, that if the endorsed certificates in England could and admittedly did pass title to the shares by manual transmission or delivery, such quality of manual transferability accorded to them by English and American law subjected them while in England to British jurisdiction in the same fashion and with the same effect as in the case of chattels or other corporeal representatives of intangibles, such as currency, bearer bonds, or endorsed bills of exchange. We shall show this to be the existing law.

As to the Treaty of Versailles, the Trustee submits the true legal situation to be as follows: the German Banks were German nationals subject to German law, hence the German Government had power to appropriate their personal property wherever situate in payment of the indebtedness of Germany to Great Britain. Thus, even admitting *arguendo* the thesis of the Ger-

man Banks that the shares, which they claim through the transfer to them by the certificates, can have no *situs* save in New Jersey and can only be there transferable by operation of law, nevertheless, the German Government in the exercise of its sovereign power (eminent domain) can transfer and has, in fact, transferred such shares to the Trustee as completely and as effectively as could have been done by the voluntary action of the plaintiffs themselves.

To admit the claim of appellants would thus inflict an injury not only upon Great Britain, the admitted owner of the certificates, but also upon Germany which has dedicated the proceeds of the certificates to the payment of its debts. Can the German *quondam* owner claim immunity from the action of the British sovereign under whose law he originally acquired the certificates in question, and can he likewise avoid the rights of his own Government to use such property to ransom his nation from the consequences of a disastrous war?

The Public Trustee presents to the Corporation the certificates of which he is the admitted owner and requests registration. The German Banks present a similar request accompanied by naught save a metaphysical thesis.

The learned court below holds that the ownership of the certificates cannot be divorced from that of the shares and hence the Public Trustee is decreed to be entitled to registration.

ARGUMENT.

I.

The appropriation by the Trustee, in conformity with the vesting orders, of the endorsed certificates situated either in German branch houses, or in British banks or companies, effected a transfer of the certificates of stock to the Trustee entitling him, upon presentation and surrender of such certificates to the respective American companies, to have new certificates issued to him.

(a)

The appellants must, and do, rest entirely upon the proposition that the certificates of stock seized by the Trustee were but pieces of paper possessing mere evidentiary quality, not constituting property; that under such circumstances, there was nothing upon which British jurisdiction could act and that consequently the judicial seizure, while it may have transferred the right to worthless bits of paper, in no wise affected the ownership of the shares of stock which appellants insist could only be situate in, and acted upon by, the New Jersey jurisdiction as the domicile of the corporation.

If, on the other hand, as the Trustee maintains, said endorsed certificates, like bonds, promissory notes, money or commercial paper generally, were transferrable *per se* and capable of having a *situs*, they were subject to British jurisdiction and the British law was capable of transferring them from the enemy holder to the Pub

lic Trustee. The fundamental question, therefore, between the German Banks and the Public Trustee involves the decision by this Court of an apparently simple and definite proposition of law.

The proposition, that in law today and at the time of the seizure such endorsed certificates did in themselves constitute property or property rights and are transferable like chattels by delivery *inter partes* or by operation of law, is well settled in England, in New York and in New Jersey.

In the following argument we shall not enter into any discussion as to the degree of negotiability possessed by a share of stock. Whether it be called negotiable or *quasi* negotiable, and how far this negotiability may have been increased by the enactment in New Jersey as well as in New York of the Uniform Stock Transfer Act, it is here wholly unnecessary to inquire.

We begin with the simple premise that chattels belonging to enemies were unquestionably seizable under the British law. Even assuming that a certificate of stock has no greater degree of negotiability than an ordinary chattel, yet, if delivery of such certificate transfers the legal and the equitable title thereto as in the case of the chattel, such certificate is capable of possessing a *situs* precisely as in the case of such chattel. It is assignability by delivery rather than negotiability which differentiates the stock certificate from the mere "chose in action" and ranks it with a chattel (*Holdsworth, History of English Law*, vol. 3, p. 354).

We shall demonstrate that this is the law regarding such certificates and that consequently,

aside from the Treaty provisions ratifying even attempted seizures, such certificates passed under the British Trading with the Enemy Acts as effectually as did physical or tangible property located in England and belonging to Germans at the outbreak of the War.

Such certificates are classed as "property" by the modern common law for the following purposes:

- (1) Founding jurisdiction and sustaining taxation.
- (2) Transfer by manual delivery as pledge or otherwise.
- (3) Compliance with the Statute of Frauds.
- (4) As the subject of larceny.
- (5) As in the same legal category regarding *situs* as notes, bills or bonds, assignable or negotiable under the Law Merchant.

The German banks must predicate their case upon the proposition that the ownership of a share of stock is a mere "chose in action", a claim of some kind against the company, which claim, whether evidenced by a certificate or not, must have an exclusive *situs* at the domicile of the corporation. This position necessitates the conclusion that stock ownership is a mere claim or debt incapable of tangible or corporeal embodiment, hence of *situs per se*. It is, of course, based upon the false analogy of a mere debt.

This proposition as to certificates of stock is contrary to authority, anti-historic, fictional and wholly incompatible with the reality of the busi-

ness world in which the transferability of stock certificates is one of the dominant factors. The fallacy consists in regarding stock certificates as mere "choses in action" assimilable neither to chattels nor to negotiable instruments, both of which are subjects of property and may possess a *situs* where physically located, regardless of the domicile of the owner or debtor.

The modern law as to chattels and negotiable instruments has long abandoned the use of the fiction "*mobilia sequuntur personam*" in favor of admitting an actual *situs* to movable property, and that maxim is now merely used as a convenience in the administration of estates, or for other purposes where it is necessary to find a single law to govern a situation, as in universal succession (*Beale, Conflict of Laws*, Vol. I, Part I, p. 180).

The law has long recognized that where a "chose in action" has taken tangible form and is transferable by manual delivery it is assimilable to a chattel (*Baty, Polarized Law*, p. 89; *Green v. Van Buskirk*, 5 Wall. 307; *Westlake, Private International Law*, ss. 149, 150, 154a; *Lockwood v. Steel Corporation*, 209 N. Y. 375, 382, 383).

That erudite and authoritative commentator on the law of contracts, Professor Williston, puts it clearly as follows:

"A distinction must be taken, however, where the chose in action has a tangible form, especially, if it is by law assignable.

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"Certain choses in action have such tangible form that the form is popularly regarded

as being itself the obligation. To some extent the law has sanctioned this popular view. A bond, a policy of insurance, negotiable paper, a savings bank book, is more than mere evidence of a claim. Indeed, wherever the surrender of the document is essential to the enforcement of a chose in action this method of looking at the matter is technically exact."

Williston, Contracts, v. 1, pp. 835-837.

And again he says:

"Possession of tangible property is essential to a true pledge, and it is only where the law recognizes that delivery of a tangible symbol involves in legal effect a transfer of possession to the property symbolized, that a pledge is possible by any other means than transferring actual possession of the property pledged. Formal documents, like bonds or negotiable paper are regarded by the common law as not merely evidence of intangible obligations but as themselves the obligations, and therefore may be pledged; though if the ownership of negotiable paper is properly transferred to a creditor as security, the transaction is more properly called a mortgage. Likewise, stock certificates, a savings bank book, a policy of life insurance or of insurance of property, may be pledged. In these cases the bailment of the paper is in legal effect the pledge of the intangible right which the paper represents."

Williston, Contracts, v. 2, pp. 1957-1958.

There is nothing new, revolutionary or mysterious in considering certificates of stock as the stock itself. This view is now consecrated by

the Uniform Stock Transfer Act, but prevailed long before the enactment of that law, which simply served to make more precise the existing law and practice of assimilating stock certificates to other negotiable instruments. Mr. Justice Day writing the opinion of this Court in the recent case of *De Ganay v. Lederer*, 250 U. S. 376, 381, notes that law and custom are here in accord;

"To the general understanding and with the common meaning usually attached to such descriptive terms, bonds, mortgages and certificates of stock are regarded as property. By State and Federal Statutes they are often treated as property, not as mere evidences of the interest which they represent."

The rule that such "scraps of paper" are to be treated by the English law as themselves the obligations and constituting property dates from the Sixteenth Century with the introduction of the Law Merchant. One of the latest historians of the English law, Professor Jenks, says:

"It is not in fact till we depart still further from the notions both of a mere right of action and of a concrete object to be reached by means of it, that we arrive at the most important classes of modern choses in action. Doubtless the bills of exchange which, as we have seen, were familiar to English eyes before the end of the Sixteenth Century, were popularly regarded as property from an early date; but the common law persisted in treating them as mere rights of action, alienable only by reason of their inheritance from the law merchant.

It was not till the advent of patents, copy-rights, stock, and shares that the true importance of choses in action appeared. For these interests could not possibly be regarded as mere rights of action; they were far too positive and comprehensive, though the French term for a share (*action*) suggests that in one country at least the idea of procedural rights clung tenaciously."

. . . .

"But it is obvious that there is a wide difference between such interests, and, say, the right to recover damages for a breach of contract or a tort; and a statute which lumps them altogether, or, at least, uses the phrase 'legal chose in action' or 'things in action' without explanation will need a deal of interpretation."

Jenks, Short History of English Law,
p. 275.

There can be no doubt that in early common law title to chattels could only be transferred *inter vivos* by physical delivery of the chattels (*Cochrane v. Moore*, 25 Q. B. D., 72-73). The growth of the merchant class and of business relationships in Europe necessitated the application of the rule as to manual delivery to commercial paper. The incorporation of the Law Merchant into British law in the seventeenth century made negotiable instruments, such as notes or bills of exchange, transferable like chattels by mere delivery.

"The requirements of a developing common life forced upon the courts the adopting of the law merchant permitting the transfer of commercial paper made payable to order

or to bearer so that the title to the chose in action passes to the transferee."

Walsh, History of English and American Law, pp. 340, 447.

It is clear that the plaintiffs are resting upon a view of the nature of endorsed or assigned certificates of stock which is wholly archaic. The same view was taken in 1697 by counsel who appeared before Lord Summers in an anonymous case (*Comyns, Digest*, p. 43). Lord Summers refused to disturb the mercantile rule of negotiability by issuing an injunction against the *bona fide* holder for value, and thus, as says Professor Jenks:

"Negotiable instruments are transferable according to the rules of the law merchant adopted into English law, by delivery or endorsement."

Jenks, Short History of English Law, p. 297.

It is not denied that under the English law the presence of the endorsed certificates in England placed the shares which they represented within the category of bearer shares and hence located in the jurisdiction of the British sovereignty, thus rendering them the proper subject of the capture and the vesting orders duly made. The statement of facts herein shows that such American shares are taxed in England as bearer shares (R. p. 70).

In the case of *Stern v. The Queen* (1896), 1 Q. B. 211, the controlling authority of which has

not since been doubted, in deciding that certificates of stock in an American Corporation constituted property within the British jurisdiction, it was held, at page 218 of the report:

"There is in this country within the jurisdiction of the Ordinary (now the Probate Court) a document the existence of which vouches and is necessary for vouching the title of some one to the foreign share, so that in the absence of that document no one at all could establish a title to the share. It is found by the case that the certificates are currently marketable here as securities for that share and the dividends payable on that share; it is found, in fact, that the delivery of the certificates in this country *ipso facto* affects the title in a sense that it entitles the transferee to all the transferor's rights. It follows that the certificate itself has some operative power here, and it seems to me not to be within the ancient rule that a simple contract debt or mere evidences of a simple contract debt are supposed to exist only at the place of the debtor's residence. It being a marketable security operative, though not completely operative, to pass the title, and having a marketable value here, I think that it is itself a document which is a document of value in the hands of the executors within the jurisdiction of the Ordinary. Therefore I think that the Crown is entitled to succeed."

The principle held applicable in that decision, which it is submitted is the true principle, was the one generally conceded and laid down in the case of *Attorney General v. Bouwens* (1838), 4 M. and W. 171, which held the property in bonds, marketable securities, locally situate in England, where the bonds were.

The principle of the foregoing decisions was further applied in the case of *Winans v. The King* (1908), 1 King's Bench 122, affirmed by the House of Lords under the name of *Winans v. The Attorney General* in (1910) Appeal Cases, p. 27, where the case of *Stern v. Queen* was cited.

Such has been the rule as to stock certificates in American corporations from an early date in the history of American law (*Knox v. Eden Musee Co.*, 148 N. Y. 441, 453, 458; *Masury v. Arkansas National Bank*, 93 Fed. 603). It no longer requires the power or originality of a Lord Summers to hold that a stock certificate is "property."

A bold attempt to block the development of the law and business usage was made in the first year of Queen Anne's reign by Lord Holt who held that promissory notes could not be enforced under the law merchant, the proper remedy being assumpsit for money lent. The result of this decision is thus commented upon:

"The result of these reactionary decisions was the enactment of the Statute 3 and 4 Anne and Chapter 9 which provided that the same actions under the law merchant could be maintained on promissory notes as upon inland bills of exchange against the maker and endorsers. The recital of the preamble of the Statute to the effect that it had been held that notes, etc., payable to order were not assignable or endorseable over within the custom of merchants shows clearly that the action of the Statute arose from Lord Holt's position and that its purpose was to restore the law as it was before these cases last above referred to were decided through the personal influence and power of Lord

Holt. It has always been obvious that Lord Holt's position was not sound."

Walsh, History of English and American Law, pp. 447-448.

Certificates of stock today occupy a precisely similar situation, and were it not for the magnitude of the interest involved in this case and for the exceptional circumstances attendant upon the Great War it would hardly be seriously contended that these certificates were not properly situate within British jurisdiction. The opposite view rests upon a theory long obsolete and which careless iteration in occasional judicial utterances cannot revive or reanimate. As Mr. Justice Holmes neatly puts it:

"Law embodies beliefs that have triumphed in the battle of ideas and then have translated themselves into action. • • •"
(*Harvard Law School Association of New York* in 1913.)

The legal nature of stock certificates and the function which they now fulfil in the business world is so definitely settled that even the temerity of a Lord Holt would be unable to disturb the situation. The New York Court of Appeals in a case involving the validity of an attachment upon certificates of a foreign corporation, speaking through Judge Gray, has well summed up the existing law as follows:

"Jurisdiction, certainly, is founded upon the presence of the thing, in respect to which it is exercised. The action is *in rem* and the question seeks the place *rei sitae*."

• • • • •

"The truth is that it did have property here, in the common acceptation of the term, as well as in the eye of the law. Certificates of stock are treated by business men as property for all practical purposes. They are sold in the market and they are transferred as collateral security for loans, and they are used in various ways as property. They pass by delivery from hand to hand and they are the subject of larceny."

Simpson v. The Jersey City Contracting Company, 165 N. Y. 193, 197, 198.

It does not appear that the certificates involved in that case were assigned by endorsement in blank, and there was some dissent in the court; but in the dissenting opinion it is stated at page 201:

"The certificates of stock of a foreign corporation are capable of manual delivery, and when the person to whom they have been issued indorses upon them an assignment in blank pursuant to the rules of the corporation and the laws of the country of its domicile, they may be transferred by such delivery, and then the property or rights of property of which they are the evidence may be transferred."

"If the record had shown that these certificates were thus indorsed, then the question certified could be answered in the affirmative upon the authority of *Warner v. Fourth National Bank*, 115 N. Y. 251."

This statement of the law as to stock certificates in this case, upholding an attachment of certificates belonging to a foreign corporation but physically situate in New York, has been ap-

proved as orthodox in New Jersey in the recent case of *Griswold et al v. Kelly-Springfield Tire Co., et al*, 120 Atl. 324, in which it is said:

"The real issue raised is whether the New York Surrogate's Court has jurisdiction to *impound the certificates and sell the stock*—" (at p. 325, italics ours).

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"But there is an element in this case which, perhaps, as effectually attaches the New York probate jurisdiction. At his death, Mr. Bryant was heavily indebted to citizens of that state, and for their protection its courts undoubtedly have the right to sequester property of a deceased non-resident to insure the payment of the debts, and to this extent and for this purpose, at least, it may be held by the New York Courts that the deceased brought not only the certificates, but his interest in the stock within their jurisdiction" (at p. 326).

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"If the Surrogate's Court upholds its own jurisdiction, its administration and sale of the capital stock will not be objectionable, and the Kelly-Springfield Tire Company would be justified in making a transfer upon its books to the purchaser,—" (at p. 326).

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"The proposition that the *situs* of capital stock is in the state where the corporation was created, and that the certificates of stock are generally regarded as mere evidence or muniments of title, is not controverted. *Neilson v. Russell*, 76 N. J. Law 27, 69 Atl. 476 reversed on other grounds, 76 N. J. Law 655, 71 Atl. 286, 19 L. R. A. (N. S.) 887; 131 Am. St. Rep. 673; *Buck v.*

Beach 206 U. S. 392, 27 Sup. Ct. 712, 51 L. Ed. 1106, 11 Ann. Cas. 732; *Kennedy v. Hodges*, 215 Mass. 112, 102 N. E. 432; *Richardson v. Busch*, 198 Mo. 174, 95 S. W. 894, 115 Am. St. Rep. 472; *Gamble v. Dawson*, 67 Wash. 72, 120 Pac. 1060, Ann. Cas. 1913D 501. But for some purposes the certificates themselves have many of the qualities and attributes of personal property. They are bought and sold on their face and title passes by delivery. They are deemed personal property when pledged to secure debts and may be levied upon by virtue of writs of attachment and of execution. They are thus regarded by the courts of the State of New York. In *Simpson v. Jersey City Contracting Co.*, 165 N. Y. 193, 58 N. E. 896, 55 L. R. A. 796, the plaintiff attached capital stock of a foreign corporation which the defendant had pledged as security for the payment of a note. In its advisory opinion the Court of Appeals held that the pledge of the certificate carried with it the owner's interest, and that the owner's residuary right as against the pledgee was seizable for the debt. Justice Gray in delivering the opinion said:

'Did it (the defendant) not, therefore, clearly have property rights, or interests, within this state, which could be impounded by our courts to abide the result of the litigation over the plaintiff's claim? I think so. The distinctions sought to be drawn are largely artificial. The truth is that it did have the property here, in the common acceptance of the term, as well as in the eye of the law. Certificates of stock are treated by business men as property for all practical purposes. They are sold in the market and they are transferred as collateral security for loans, and

they are used in various ways as property. They pass by delivery from hand to hand and they are the subject of larceny, *In re Whiting*, 150 N. Y. 27' " (at p. 325).

The New Jersey Court further cites with approval at page 325, the following from Cook:

"It must be admitted that this decision, although apparently a wide departure from the common law, is a correct decision, in view of the fact that the certificates of stock have gradually grown to be more than mere receipts or evidence of stock, and have come to be the stock itself, practically, in business transactions, especially in America, and, like a promissory note, a certificate of stock is property in itself and carries title, irrespective of the corporate books and of transfer on the corporate books. The decisions on this subject may perhaps be reconciled on the ground that where the words of the statute are broad enough to allow an attachment to be levied on certificates of stock, such a levy is effective, inasmuch as certificates of stock now represent value in themselves, in very much the same way as promissory notes."

Cook, Corporations, 6th Ed. v. II, p. 1272, now 8th Ed. Vol. II, pp. 1608, 9.

Such certificates are considered property for the purpose of jurisdiction of a Federal Court within Section 57 Judicial Code (*Blake v. Foreman Bros. Banking Co., et al.*, 218 Fed. 265).

We have seen that a pledge of personal property cannot be effected without a transfer of the possession. Hence, certificates of stock could not be pledged at all, were the appellants' proposi-

tion sound. That this is contrary to accepted law and to universal business usage is too obvious to require extended discussion. Mr. Cook says, in his great work on Corporations:

"A pledge may be defined to be a delivery of personal property as a security for some debt or engagement."

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"A delivery of the certificate of stock indorsed in blank is sufficient to constitute a pledge, without any memorandum in writing to that effect and without a registry of the same being made on the corporate books. Not even a provision of the charter or a by-law of the corporation to the effect that transfers are not valid until registered on the corporate books can prevent a pledge of stock being made by a mere delivery of the certificates indorsed in blank, or indorsed to the pledgee, without such registry."

8th Ed. Vol. II, pp. 1488, 98, 99.

The cases to this effect are legion and do not require citation. The leading case is *McNeil v. The Tenth National Bank of the City of New York*, 46 N. Y. 325.

The same doctrine has been formulated with equal precision by this Court in the case of *Christian v. Atlantic & N. C. R. R. Co.*, 133 U. S. 233, wherein it is held at page 241:

"But a pledge in the legal sense, requires to be delivered to the pledgee. He must have the possession of it. He may then, in default of payment of the debt for which the thing is pledged, sell it for the purpose of raising the amount, by merely giving proper notice to the pledgor. In the case of stocks and other choses in action, the

pledgee must have possession of the certificate or other documentary title, with a transfer executed to himself, or in blank (unless payable to bearer) so as to give him the control and power of disposal of it."

This case explains fully the business customs regarding the pledge of stock, and their early recognition as part of the common law prevailing in the American states.

Sedgwick in a recent edition of his work on Damages, Vol. 1 (9th Ed), page 521, identifies the certificates with the shares themselves as follows:

"A wrongful dealing with the certificate amounts to the same dealing with the shares themselves, and the value of a certificate of stock is the value of the shares."

Were the certificates in question the mere scraps of paper that the German appellants claim, this whole system of pledging stock certificates would be without foundation, a great department of modern business would be thrown into chaos, and a couple of generations of courts, judges, lawyers, and business men utterly confounded.

As to the statute of frauds, it is the rule in America generally that sales of stock fall under the category of contracts for the sale of "goods, wares, and merchandise." The case of *Tisdale v. Harris*, 37 Mass. 9, has so held and Mr. Cook states that:

"This decision has been uniformly followed in America."

Cook, Corporations, 8th Ed. Vol. II, p. 1219.

The fact is that the law now classes certificates of stock with bills, notes, bonds, and evidences of indebtedness circulating as money. As such they are transferred by delivery and are capable of possessing a *situs* and of being acted upon directly by the law.

An ordinary U. S. Treasury bill or silver certificate is not the coin itself, yet is treated as such and has a *situs* where found as much as an iron safe, a cannon or an automobile. No one has questioned the title of the Trustee to the paper money or currency found in these German banks in Britain during the War.

This very Court in the exercise of its original jurisdiction has decreed the forced sale of the shares of stock in a corporation outside the home state of the corporation.

In the case of *South Dakota v. North Carolina*, 192 U. S. 286, the following decree providing for the forced sale of shares in a North Carolina Railroad Company was entered:

"A decree will, therefore, be entered,
..... that
in default of such payment an order of sale
be issued to the Marshal of this Court, directing him to sell at public auction all the interest of the State of North Carolina in and to one hundred shares of the capital stock of the North Carolina Railroad Company, such sale to be made at the east front door of the Capitol Building in this city."

A similar view is taken by this Court in the very recent case of *Yazoo & Mississippi Valley Railroad Company v. Clarksdale*, 257 U. S. 10. That case involved a levy and execution upon

certain stock certificates in the Clarksdale Bank. The suit was brought to compel the Railroad Company to recognize the ownership of this stock and to issue to it new stock on the ground that the marshal's sale of the stock was void under the statutes of Mississippi because made on a mere muniment or *indicium* of title to the stock, to wit: the certificate. It is there held:

"Taking the section as a whole, it classes bank notes, bills or evidence of indebtedness circulating as money, and shares in an incorporated company, together, and makes them subject to be taken and sold as *goods and chattels* or to be 'applied to the payment of the execution.' At common law, choses in action were not subject to levy as personal property. *Here the legislative purpose appears to be to treat the written evidences of the choses in action circulating as money as in themselves capable of manual seizure by the execution officer, and in appropriate cases, of actual application as money on the execution debt. The joining of shares of stock in this section with such choses in action indicates that the shares are to be regarded as in pari materia, and to be dealt with, as nearly as may be, in like manner.*

"The elaborate and specific provision for a levy upon corporate stock of sec. 3467 of the Mississippi Code of 1892, which succeeded the Code of 1871, was, and was evidently intended to be, a departure from and a substantial amendment of sec. 849 in this respect. Under the later code, provision for a levy on bank notes, bills and other evidences of indebtedness, is separated from that prescribing the levy on shares of stock. Shares of stock are no longer dealt with

expressly as 'goods and chattels.' The officers of the corporation are no longer required to give a 'certificate' of the number of shares held by the judgment debtor to the levying officer, but are to make a statement in writing.

"The procedure provided in sec. 849, in our view was intended to furnish to the levying officer a certificate of the shares of the defendant which the officer could manually take and offer for sale as the shares, and which, when endorsed by the officer with a record of his proceedings and sale, would work an assignment of the shares to the purchaser 'as if regularly assigned to him by defendant' as, by the usual transfer of a certificate. If we are right in this view, and the absence of any specific form for a levy in the section confirms us in it, then, of course, a certificate of shares issued to the debtor, and found in the custody of his agent or trustee, is the proper subject of levy and sale under the section. This statutory method of treating shares of stock and certificates for them as the same for purposes of levy and 'as goods and chattels' is not without parallel. *People ex rel. Wynn v. Griffenhagen*, 167 App. Div. 572, 152 N. Y. Supp. 679; *Mitchell v. Leland*, 158 CCA 329, 246 Fed. 103; *Beal v. Carpenter*, 148 CCA 633, 235 Fed. 273; *Puget Sound Nat. Bank v. Mather*, 60 Minn. 362, 62 NW 396. We think the levy was valid" (at page 21, italics ours).

This case is dominant authority here for the proposition that certificates of stock may be transferred *in invitum* by the law and under the authority of the jurisdiction in which they were found. While in that case the certificates of

stock levied upon were certificates of stock in a domestic corporation, this court cites with approval cases laying down a similar rule with respect to certificates of stock of a foreign corporation. One of these cases, *Wynn v. Griffenhagen*, 167 App. Div. (N. Y.) 572, holds that:

“Certificates of stock in a foreign corporation owned by a non-resident and indorsed in blank, but deposited in this State for the purpose of sale, are personal property within the meaning of the provisions of the Code of Civil Procedure relating to the levy of a warrant of attachment, and after being attached in an action against the owner, in which a judgment was obtained, it is the duty of the sheriff to sell the same under execution.”

The Court in that case, speaking through Justice Laughlin, said:

“The question here presented, however, is not what property was bound by the execution, or when it became bound thereby, but whether the certificates of stock were subject to levy under the warrant of attachment and sale under the execution after they came into the possession of the sheriff. These certificates of stock were personal property within the statutory definition contained in section 39 of the General Construction Law (Consol. Laws, chap. 22; Laws of 1909, chap. 27), which prescribes that ‘the term personal property includes chattels, money, things in action . . . and everything except real property, which may be the subject of ownership.’ The point decided in *Plimpton v. Bigelow* (93 N. Y. 592) was that a warrant of attachment could not be levied upon the shares of stock owned by a

non-resident in a foreign corporation merely by giving notice to the secretary of the corporation within this State, pursuant to the provisions of section 649 of the Code of Civil Procedure. In that case the certificates of stock were not within this State, and the court rightly held that the provisions of section 649 of the Code of Civil Procedure authorizing the levy upon the capital stock by giving notice to officers of the corporation relate to domestic corporations only; but the general observations contained in the opinion to the effect that it is the interest of the shareholder in the surplus assets of the corporation on dissolution only which may be levied upon on account of ownership of certificates of stock, and that such levy must necessarily be made in the jurisdiction where the company is incorporated, were not essential to the decision, and have not been followed in subsequent decisions by the same court. In *Simpson v. Jersey City Contracting Co.* (165 N. Y. 193) it was held that the interest of a non-resident owner of capital stock in a foreign corporation pledged to and in the possession of a resident of the State as security for a debt, was subject to attachment here, and that the purchaser on a sale thereof pursuant to execution would obtain good title to the stock subject to the lien of the pledgee. In that case Judge Gray, writing for the majority of the court, in discussing the question as to whether the defendant's interest in the pledged stock constituted property within this State, said: 'The truth is that it did have property here, in the common acceptance of the term, as well as in the eye of the law. Certificates of stock are treated by business men as property for all practical purposes. They are sold in the market and

they are transferred as collateral security for loans, and they are used in various ways as property. They pass by delivery from hand to hand and they are the subject of larceny. See *in re Whiting*, 150 N. Y. 27.' In *People ex rel. Hatch v. Reardon*, 184 N. Y., 431, Judge Vann, writing for an unanimous court, in sustaining the Stock Transfer Act as applicable to the transfer of certificates of stock in foreign as well as in domestic corporations, said, among other things: 'But even assuming that a tax on the sale of property is, in effect, a tax on the property itself, what are certificates of stock, and how may they be treated by the State for the purpose of taxation? They may be treated as property from the function they perform and the use that is made of them. They may well be regarded as a distinct species of property, for they now represent the bulk of property in the State and are the universal medium of transfer. As we said in a recent case: "The main use of certificates is for convenience of transfer, and they are treated by business men as property for all practical purposes. They are sold in the market, transferred as collateral security to loans and are used in various ways as property. They pass by delivery from hand to hand, are the subject of larceny and are taxable generally in this State." *Matter of Whiting*, 150 N. Y. 27, 30. Although issued by a foreign corporation and owned by a non-resident, if they are found within the State they may be seized under a warrant of attachment. *Simpson v. Jersey City Contracting Co.*, 165 N. Y. 193. Speaking of the nature of a share of stock, Mr. Justice Nelson declared it to be "a distinct, independent interest or property, held by the stockholder like any other property that may

belong to him, and, of course, subject to like taxation." *People v. Com'rs.* 4 Wall (U. S.) 244, 258. And in another case it was said: "Shares of stock may be within a State and the property of the corporation outside of it." (*Kidd v. Alabama*, 188 U. S. 730, 733). We think that the tax, whether it is regarded as a tax on the sale of stock certificates or on the certificates themselves, touched neither person nor property without the jurisdiction of the State.' In *Lowenthal v. Hodge*, 120 App. Div. 304, this court unanimously held that the stock of a foreign corporation owned by a non-resident but pledged here, is subject to the levy of a warrant of attachment against the owner by notice to the pledgee, who has a right to retain the possession by virtue of his lien. If the interest of a non-resident owner in the capital stock of a foreign corporation, which is pledged as security for a debt within this jurisdiction, is subject to the levy of an attachment, I fail to see upon what principle the stock in question was not subject to the levy of the attachment. Here the bank had no lien, but it had possession with authority to sell, and by the assignments executed in blank by the owner the purchaser would become entitled to have the stock transferred to his name on the books of the company in the foreign jurisdiction. I am of opinion, therefore, that certificates of stock, whether of a domestic or a foreign corporation, are personal property within the contemplation of the provisions of the sections of the Code of Civil Procedure relating to the levy of a warrant of attachment" (pp. 576-578).

These cases are again reviewed and approved in *General Motors Corporation v. Ver Linden*, 199 App. Div. (N. Y.) 375-381.

The Federal Courts of the United States have taken a similar view. In *Beal v. Carpenter*, 235 Fed. 273, the suit was based upon the transfer of two certificates of stock. The validity of the transfer rested upon a decree of foreclosure of the pledge of the stock by the original owner and a sale of the certificates of stock in a foreign corporation under such decree of foreclosure. The defense was based upon the "scrap of paper" doctrine, to wit, that the State of New York could acquire no jurisdiction by substituted service to render a decree of foreclosure. The Circuit Court of Appeals repudiated the doctrine in unequivocal terms as follows:

"It was indispensable to the acquisition by the New York court by substituted service on McDonnell of jurisdiction to decree the foreclosure of his pledge and the sale of his pledged certificates that those certificates should constitute property having a *situs* in the State of New York, and the contention on which the first ground for the reversal of the decree rests is that they were not property, but were, like deeds of land, mere evidences of title to the interest of McDonnell in the property of the association. *But certificates of shares of stock in a corporation are not only evidences of interests in the property of the corporation, but representatives of those interests having a situs wherever they are present to such an extent that they are property of value which will sustain the jurisdiction of a court to decree the sale and transfer of both the certificates and the interests they represent by its judgment or decree founded on substituted service upon the owner, although he is not a resident of the state in which the judgment*

or decree is rendered, and neither he nor any of the property of the corporation is present within its jurisdiction. *Merritt v. American Steel Barge Co.*, 79 Fed. 228, 231, 24 C. C. A. 530; *Blake v. Foreman Bros. Banking Co.* (D. C.) 218 Fed. 264, 266." (at page 274, italics ours.)

The same doctrine had been methodically enunciated by the Circuit Court of Appeals, Eighth Circuit, in the case of *Merritt v. American Steel Barge Co.*, 79 Fed. 228. The question as to the "property" character of the certificates themselves was clearly raised and therein decided. The certificates of stock in question were certificates of a New Jersey corporation precisely as in the present case. These certificates were pledged as collateral in New York, and the jurisdiction of the New York courts to establish a lien thereon in a suit commenced by substituted service was upheld. If the stock certificates had not constituted property within the State, the action of the New York courts would have been without jurisdictional foundation.

"It is next insisted that the judgment of the Supreme Court of New York was void because the plea interposed by the defendant showed that the stock to which the suit in New York related was the stock of a New Jersey corporation, over which the courts of New York could exercise no jurisdiction or control. The rule of law is not disputed that, in a suit commenced and prosecuted upon constructive or substituted service of process, the courts of a state or country may lawfully adjudicate on the title to real or personal property situated within its borders, or upon liens or claims against prop-

erty which is so situated, provided they are authorized to do so by local statutes. *Arndt v. Griggs*, 134 U. S. 316, 10 Sup. Ct. 557. It is contended, however, that this rule has no application to the stock of a foreign corporation, that stock certificates are mere evidence of the ownership of stock, and that the stock of a corporation can have no *situs* outside of the state in which the corporation was created. Speaking technically, it is true that a stock certificate is written evidence of a certain interest in corporate property. The same may be said of notes and bills. They are simply evidence of indebtedness on the part of the individuals or corporations who issue them. But in the business world such obligations or securities are treated as something more than mere muniments of title. They are daily bought and sold like ordinary chattels, they may be hypothecated or pledged, they have an inherent market value, and, while differing in some respects from chattels, they are generally classified as personal property. *Allen v. Pegram*, 16 Iowa, 163, 173; *I Cook, Stock, Stockh. & Corp. Law* Sec. 12; *Schouler, Pers. Prop.* Sec. 482; *Bank v. Byram* (Ill.) 22 NE 842. Stock certificates may be made the subject-matter of a suit in replevin, and, if they are dealt with wrongfully by the person having the possession thereof, a suit for the conversion of the stock may be maintained, as the present action and many others will serve to demonstrate. *McAllister v. Kuhn*, 96 U. S. 87, 89. In some states, certificates of stock in a foreign corporation are subject to garnishment. (*Bank v. Mather* (Minn.) 62 N. W. 396), while in other states, owing in a measure to a difference in local laws, they are not subject to such process, or at least stock in a foreign corporation cannot be

reached and subjected to the payment of debts merely by notice or process served upon the officers of the corporation while they are within the state in which the attachment proceedings are instituted (*Plimpton v. Bigelow*, 93 N. Y. 592). It must be admitted, however, that stock in a corporation may be transferred by the owner, without any action on the part of the corporation, so as to vest a good title thereto in the transferee, by a simple transfer of the stock certificate, since it is now well settled that regulations made by a corporation for the transfer of stock on its books are for its own convenience and protection; that they are simply cumulative, and do not operate as a prohibition against other modes of transfer. *Bank of Commerce v. Bank of Newport*, 27 U. S. App. 486, 11 C. C. A. 484, and 63 Fed. 898; *Horton v. Mercer*, 36 U. S. App. 234, 18 C. C. A. 18, and 71 Fed. 153; *McNeil v. Bank*, 46 N. Y. 331, and cases cited. The New York statute under which the suit in New York was instituted authorizes a proceeding on substituted service 'where the complainant demands judgment that the defendant be excluded from a vested or contingent interest in, or lien upon, specific real or personal property within the state; or that such an interest or lien in favor of either party be enforced, regulated, defined or limited, or otherwise affecting the title to such property.' Code Civ. Proc. N. Y. 1877 Sec. 438. In view of the foregoing considerations, we are of opinion that stock certificates are personal property, within the purview of the foregoing statute, and that when such certificates are held in pledge, or as collateral, within the state, the courts of that state have jurisdiction to establish the existence of a lien thereon, and to enforce

the same by directing a sale of the property."

Merritt v. American Steel Barge Co.,
79 Fed. 228, 234, 235, 236 (italics
ours).

This doctrine is restated in the recent case of *Blake v. Foreman Bros. Banking Co., supra*, where again the question arose as to the "property" qualities of certificates of stock in a foreign corporation properly endorsed and delivered. Such securities were held "property" having a *situs* where physically present upon which to found the jurisdiction of the Federal Court to enforce a lien thereon precisely as might have been done in the case of any chattel. The District Judge there disposed of the contention that stock certificates were mere "choses in action" or other intangible abstractions incapable of actual localization, in the following short statement:

"Considering the pertinent questions as if all of the corporations involved were incorporated in states other than Illinois, I am of the opinion that stock certificates such as are described in the bill in this case, when properly indorsed and delivered as security to a resident trustee, with power of sale in case of default in the trust agreement, are property within the definition of section 57 of the Judicial Code, conferring jurisdiction upon this court. Such stock certificates were intended as property, endowed with all the characteristics of property, and regarded as such by the parties and by the business community. I agree fully with the reasoning of the court in *Simpson v. Jersey City Con-*

tracting Co., 165 N. Y. 193, 58 N. E. 896, 55 L. R. A. 796, and *Merritt v. American Steel Barge Co.*, 79 Fed. 228, 24 C. C. A. 530. The case of *Chase v. Wetzelar*, 225 U. S. 79, 32 Sup. Ct. 659, 56 L. Ed. 990, does not announce a contrary rule," (at page 266).

The case of *Chase v. Wetzelar*, 256 U. S. 79, not only "does not announce a contrary rule," but emphasizes rather the fact that the Federal jurisdiction in such a case is based upon the existence of actual property within the district and does not deal with property merely "fictitiously or constructively" present. In the Opinion of the court it is there stated:

"We think there is no basis for the contention that the section contemplates the exercise of jurisdiction by a Federal Court upon the assumption of its control over property when there is no property subject to control within the jurisdiction. In other words the power conferred rests upon a real, not an imaginary base," (pp. 83, 89).

The doctrine of the *Foreman* case has the approval of the Circuit Court of Appeals of the Second Circuit.

"And we have no doubt that stocks and bonds are property within the meaning of section 57 of the Judicial Code.

"In the case now before the court there are in the district in which the suit is brought certificates of shares of stock and debenture bonds issued by the Railway Company and by the Construction Company, both of which were organized, as already stated, under the laws of Maine."

• • • •

"In *Blake v. Foreman Bros. Banking Company* (D. C.), 218 Fed. 264, District Judge Carpenter held that certificates of stock in a foreign corporation properly indorsed and delivered as security to a trustee with power of sale in case of default are 'property' having a *situs* at the place of business of the trustee under section 57."

Vidal v. South American Securities Co.,
276 Fed. 855-868.

The same rule has been applied in proceedings under our Trading with the Enemy Act. In *Garvan v. \$20,000 Bonds, et al.*, 265 Fed. 477, in the Circuit Court of Appeals in the Second Circuit, affirmed by this Court, *sub nom. Central Trust Co. v. Garvan*, 254 U. S. 554, a proceeding *in rem* was maintained by the Alien Property Custodian in the Southern District of New York against a number of securities, which included the stocks of several corporations of states other than New York, such as the Atchison, Topeka & Santa Fe, Pennsylvania and Norfolk & Western Railroad Companies. The libel based the jurisdiction upon the presence of the securities within the district. This necessarily recognizes the principle that shares of stock have a *situs* where the certificates are physically located, since a proceeding *in rem* cannot be maintained unless the *res* is within the jurisdiction.

Furthermore, the American Alien Property Custodian has followed the same practice as the English Custodian of Enemy Property (the Public Trustee), in seizing the certificates physically situated in the United States of stock in foreign corporations (Mexican and others) be-

longing to enemy owners. This is shown by his printed official report submitted to the President on February 22, 1919.

The appositeness of the above cited cases to the case at bar becomes conclusive when we remember that the German plaintiffs must stand or fall with the theory of *exclusive situs* at the corporate domicile.

If the presence of endorsed stock certificates in the jurisdiction is sufficient foundation for the exercise of power by the Federal Court, by a parity of reasoning it inevitably follows that the British Government and courts could and did rightfully exercise similar power over stock similarly situate within their own jurisdictional limits.

In many State courts are found other cases to the same effect, such as *Puget Sound National Bank v. Mather*, 60 Minn. 362; *Kuhn v. McAllister*, 1 Utah 273.

There are several early decisions of the State courts, at a time when the law of stock transactions was less settled and developed to the effect that a valid attachment of shares of stock of a foreign corporation cannot be made by the seizure of certificates. This archaic legalism is unsound and incompatible with the law prevailing in State and Federal courts generally, as well as inconsistent with the doctrine enunciated by this Court in the case of *Yazoo & Mississippi Valley Railroad Company v. Clarksdale*, *supra*. In any event it was only enunciated in cases where the Legislature had not so declared. No case ever held such attachment unconstitutional.

In so far as these early cases formulate a view, long since discredited and found unworkable,

that shares of stock duly endorsed are not like chattels and negotiable instruments in themselves property, they are quite obsolete. Such decisions represent an immature and erroneous conception of the nature of stock certificates analogous to that enunciated by Lord Holt in the Seventeenth Century as to promissory notes.

The Uniform Stock Transfer Law prevailing both in New York and in New Jersey merely codifies the existing law in regard to the "property" quality of a certificate. An endorsed certificate is as completely transferable by delivery as any chattel. It transfers no mere equitable right, but a complete legal right, and it is too late to question the fact that such instruments are in themselves property. Not only are they property, but they are the most important property known to the modern law. To contend that the British Public Trustee in taking over, in compliance with English law, the stock certificates in question was seizing nothing but "wastepaper" would be not only a reversion to an obsolete legal concept, an absurd archaism, but one wholly impossible of realization in view of worldwide business uses.

This situation has been summarized in effective fashion by Mr. Cook, as follows:

"It will be seen by a review of the sections of this chapter, that the dangers of loss incurred by the purchase of a certificate of stock are not serious or numerous; and it is well that such is the result. Perhaps the most striking industrial feature of modern times is the accumulation of personal property, and the investment of that property, not in landed estates, but in the stocks and bonds of corporations. Such investments

are made not alone by capitalists, but by thousands whose savings have no other satisfactory mode of disposition. In fact it is curious to note how the different kinds of property have a different relative importance in the course of time. Five hundred years ago real estate was the only property that brought wealth and standing to its owner. Personal property was of little consequence, and not much of it was in existence. But during the past two hundred years personal property has risen to the ascendancy. The banker, merchant, manufacturer, and capitalist have become wealthier than the landowner. The banker millionaire is greater and more powerful than the nobility. Land, the old source of centralized wealth, inordinate power, caste privileges and hereditary rights, no longer maintains its preeminent importance.

And it is not alone the capitalist and banker that purchases and holds stock in corporations. The surplus wealth of the people at large is being invested in corporate stocks and bonds. Consolidations of railroad and manufacturing institutions are taking place on a colossal scale, and each consolidation involves the issue of new securities. A single company, The United States Steel Corporation, has issued bonds and stock aggregating over one and a half billion of dollars. The great railroad systems are annually increasing their capitalization. Street railways, gas companies, electric-light companies and water-works companies are continually adding to the list of these securities. In the course of time all these securities pass into the hands of investors, *bona fide* holders. It would hardly be an exaggeration to say that the law governing stocks and bonds, in the magnitude

of the interests, the number of persons affected, and the variety of legal principles involved, is more important than all other branches of law combined. Even real estate, so far as the cities are concerned, is being absorbed by corporations, which issue stock to represent it. In the great moneyed centers stock constitutes the chief basis of credit, as collateral for loans at banks and trust companies. Hundreds of millions of dollars are loaned with no other security than certificates of stock transferred in blank with no registry whatsoever on the corporate books. Hence it is with reason that the constant tendency of the courts is to protect the *bona fide* purchasers of certificates of stock. It is fitting, in these days of the formative period of the law governing corporations and stock, that the principles governing the transfer of certificates should favor the protection and security of the investing public, and should be against secret liens, attachments, claims, and negligence of both the corporation and third persons. The Circuit Court of Appeals of the United States has well said: 'In the great majority of cases when stock is merely pledged for a loan, no record of the transfer is made on the books of the corporation, and in the judgment of laymen the making of such a record seems to be a needless formality. The trend of modern decisions has been to encourage the free circulation of stock certificates in the mode last indicated, on the theory that they are a valuable aid to commercial transactions, and that the public interest is best subserved by removing all restrictions against their circulation, and by placing them as nearly as possible on the plane of commercial paper'."

Cook, Corporations, 8th Ed. Vol. II,
Sec. 444, p. 1437 *et seq.*

The Uniform Stock Transfer Act in force in New Jersey and New York alike codifies this long settled law and usage. No act of the corporation itself can affect the fact that the transfer of the share is brought about by manual physical delivery of the certificate. Section I of the Uniform Stock Transfer Act reads as follows:

"Title to a certificate and to the shares represented thereby can be transferred only,

(a) By delivery of the certificate indorsed either in blank or to a specific person by the person appearing by the certificate to be the owner of the share represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent."

That the delivery of an endorsed certificate transfers both legal and equitable title notwithstanding any by-law of the corporation to the

contrary has long been settled law (*Union Bank v. Exchange Bank*, 143 App. Div. (N. Y.) 128).

Judge Cardozo in the New York Court of Appeals has very recently re-stated this doctrine in the case of *Travis v. Knox Terpezone Company*, 215 N. Y. 259 at 264:

"The shares in controversy have been issued; they have been assigned to the plaintiff; he is their owner, both in law and in equity; and all that remains to be done is to register a perfected right (*Robinson v. Nat. Bank of New Berne*, 95 N. Y. 637, 641)."

To the same effect is the recent decision in *Hale v. West Port Rico Sugar Co.*, 200 App. Div. (N. Y.) 577.

The transfer of such a share is even more effective than in the case of an ordinary chattel, for it is provided that:

"Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby."

Section 8, *Uniform Stock Transfer Act*.

Nor is an attachment valid until such certificates be actually seized by the officers making the attachment.

It would be difficult to imagine any physical thing possessing more completely the attributes of the legal concept—"property."

Not only were the certificates in the case at bar duly endorsed and physically present in England, but they were present there with the consent of and for the convenience and benefit of the owner. No question can, therefore, be raised of their being property in England without the consent of the owner, even though in such a case the consent would have been quite immaterial.

As was said by Lindley, *L. J.*, in the case of *Williams v. Colonial Bank*, 38 Ch. Div. 388:

"Now the certificates have been dealt with by the executors in England, and the certificates are chattels, and when we are considering who is entitled to a chattel bought or sold or pledged in England it is English law and not American law that is to govern the case."

The certificates involved in that case had not, as in the case at bar, been endorsed. The case appears to have turned upon this point, and in affirming the judgment of the Court of Appeal in the House of Lords, Lord Herschell stated that:

"As at present advised I do not see any difference between the law of the State of New York and the law of England in this respect. If in the present case the transfer had been signed by the registered owner and delivered by him to the brokers, I should have come to the conclusion that the banks had obtained a good title as against him,

and that he was estopped by his act from asserting any right to them. But this is not the case with which your Lordships have to deal. The transfers in this case were not signed by the registered owner, John Michael Williams, but by his executors."

L. R. 15 App. Cas. p. 285.

This is the same doctrine as enunciated in the *Beal* and *Blake* cases, *supra*.

The German Branch banks or the British brokers holding the certificates were the legal owners in England. The English law acted directly upon those certificates, and consequently the title, both legal and equitable, was properly decreed by the vesting order in the British Public Trustee.

(b)

The appellants rest their case mainly upon inferences which they seek to draw from the decision of this Court in *Jellenik v. Huron Copper Co.*, 177 U. S. 1, but which that decision does not sustain.

We do not challenge the doctrine of that case. Unquestionably, for certain purposes, the shares or interest of a stockholder are considered to be at the domicile of the corporation. That domicile is thus a constructive locality or *situs* of the shares for certain purposes. Nor do we challenge the doctrine adduced from this and in many similar cases, that the question of who is entitled to be registered as owner on the books of the company is a matter ultimately governed by the law of the state of charter.

Upon this proposition, therefore, we are not at variance with counsel for the appellants. Their argument is, and must be, as follows:

Shares of stock in a corporation have an exclusive *situs* at the domicile of the corporation. Therefore, a seizure of the certificates under any law other than that of such domicile is a mere seizure of worthless paper. Hence, the act of the Public Trustee was a complete nullity, and the original ownership of the plaintiff was unaffected thereby.

The fallacy of this reasoning lies in assuming that the corporation may arbitrarily refuse to register stock presented to it for registration. The corporation is bound by the law, and the law, as we have definitely shown, both common and statutory in New Jersey as well as in New York and in England, attributes the right to registration to the owner of the certificates.

The fundamental question, therefore, is resolved back into the question of the validity of the seizure. As the New Jersey law recognizes that, in the absence at least of fraud, title passes with the physical transfer and possession of the certificates, the question then is, has such title to the certificates passed by the English law.

This Court in the *Jellenik* case was quite correct in holding that the law of the domicile of the corporation must finally determine who was entitled to registration. It was, therefore, held that in making such determination jurisdiction over non-resident holders of stock certificates, who were indispensable parties, could be acquired by publication, because the United States court in the district of the corporate domi-

cile could determine the question, the action being in the nature of one *in rem*. This could not affect the right of a person holding the actual certificates to claim that as such holder he was entitled to registration because owner of the certificates, and the court in such a case would, of course, be bound to consider any and all rights incident to manual possession of the certificates. Hence the holder was held a necessary party.

It is obvious that there is no conflict between cases of the character of the *Jellenik* case and those of the character of *Simpson v. Jersey City Contracting Co.*, *supra*. There are, it is true, in some of the first, general statements indicating an exclusive *situs* as to shares of stock at the domicile of the corporation, but these over-general and insufficient statements as to "exclusive-ness" do not affect the soundness of the simple proposition involved.

In the *Jellenik* case itself the holders of the certificates were declared necessary parties to the litigation by reason of possessing such certificates. The question tried was whether they were the owners of the certificates.

As the court said:

"The corporation being brought into court by personal service of process in Michigan, and a copy of the order of court being served upon the defendants charged with *wrongfully* holding certificates of the stock in question, every interest involved in the issue as to the real ownership of the stock will be represented before the court" (at page 14.)

Thus the ownership of the shares depended upon the ownership of the certificates.

The registration of the stock can only be compelled at the domicile of the corporation or where it maintains a transfer office (*Lockwood v. United States Steel Corporation*, 209 N. Y. 375). In order to obtain such registration the parties claiming it must comply with the local law. Whoever in England obtained the certificates, whether through foreclosure of pledge or through enemy property seizure, must, admittedly, in order to obtain registration comply with such law.

It is, however, a complete *non sequitur* from this elementary proposition to the assumption that the certificates themselves are without inherent value, and that although transferable by mere delivery, as in case of ordinary chattels, they yet do not partake of the nature of property, but aside from evidentiary purpose, are mere wastepaper. This proposition, at once reactionary and revolutionary, has no foundation in the cases themselves and can only find support in some careless *dicta* predicated upon a view of the nature of stock certificates which, it has been shown, long since became obsolete.

The distinction between the two classes of cases and their entire consistency is well formulated by Professor Beale in his work on "Foreign Corporations," as follows:

"The interest of the stockholder in a corporation is double. He has in the first place membership in the corporation, with all the rights that come from being registered as a stockholder on its books. This interest is property which can be affected only through the corporation itself, by a transfer of ownership on the books. It can be affected, therefore, only where the corporation can be

reached; and since membership in the corporation has to do with its internal affairs, no court will interfere with it except the court of the State of charter. It follows that this interest of the stockholder can be attached only in the State of charter; and that it is impossible to attach the stockholder's interest in a foreign corporation, even though the corporation is within the jurisdiction of the court. For the same reason shares in a foreign corporation are not subject to garnishment, and statutes providing for garnishment of a stockholder's interest must be interpreted as applying only to domestic corporations.

"The stockholder, however, has another interest besides his relation to the corporation. *His certificate of stock is by mercantile custom itself a document of value, and may be reached by a court which has control of it, though it has no control over the corporation itself.* What effect a sale on execution would have upon membership in the corporation is a different question. If the certificate has been indorsed in blank by the owner, or is accompanied by such *indicia* of title that a transferee could take, and has been deposited with a resident bailee, the certificate may be reached by garnishment, *Simpson v. Jersey City Contracting Company*, 164 N. Y. 193." (italics ours.)

Beale, Foreign Corporations, 483-485.

The doctrine of the *Jellenik* case has been recently specifically adverted to in New York by the Court of Appeals, and in so doing the court referred to the *Simpson* case as follows:

"We have not overlooked the case of *Simpson v. Jersey City Contracting Co.*, 165 N. Y. 193, where it was held by a divided

court that certificates of stock of a foreign corporation belonging to a non-resident in the possession of a resident of this state as security for a debt and the interest of the owner or pledgor therein was a property right within the state which might be levied upon under warrant of attachment. While that decision perhaps is in conflict with some of the cases cited which hold that certificates of stock are not property and subject to proceedings in the state wherein they are located, I do not see that it in any manner conflicts with the proposition established by so many decisions that the interest of a stockholder in a domestic corporation is property which may be regarded as having its *situs* in this state."

Holmes v. Camp, 219 N. Y. 359, 368.

In the case of *Columbia Brewing Company v. Miller*, 281 Fed. 289, in holding that shares of stock in a Louisiana Corporation were seizable by our Alien Property Custodian at the home of the corporation the Circuit Court of Appeals of the 5th Circuit saw fit to comment favorably upon the existence in Louisiana Law in perfect harmony of this double *situs* theory and rule. The court in that decision says at page 290:

"In the case of *Parker, Tax Collector v. Sun Insurance Co.*, 42 La. Ann. 1172, 8 South. 618, it was decided that the interest of a stockholder in a corporation could be seized, either by taking possession of the certificate representing that interest or by seizing the interest of the stockholder in the assets or property of the corporation by giving notice to the proper officer thereof. The opinion in the case of *Succession of Sinnot*

v. Hibernia National Bank, 105 La. 705, 30 South. 233, expresses views as to the nature of stock certificates in harmony with those stated in the opinion in the case of *Jellenik v. Huron Copper Mining Co.*, *supra*" (italics ours).

The law of New Jersey is not only in accord with the common law in regard to the transfer of endorsed certificates by delivery, but has embodied it in statutory form by the adoption (1916) of the Uniform Stock Transfer Act.

This law is precisely similar to that of New York and many other states.

The General Corporation Act of New Jersey, paragraph 20, provides that:

"The shares of stock in every corporation shall be personal property, and shall be transferable on the books of the corporation in such manner and under such regulations as the by-laws provide."

The effect and intent of the Uniform Stock Transfer Law are well illustrated by the following decision of the Court of Errors and Appeals of New Jersey rendered with respect to the effect of the provision of the Uniform Bills of Lading Act of the same nature as the foregoing provision of the Stock Transfer Act.

In the case of *Brimberg v. Hartenfeld Bag Co.*, 89 N. J. Equity, 425, where the Court was giving consideration to the effect of the provision of the law that goods in the possession of a carrier may not be attached unless the negotiable bill of lading issued therefor be first surrendered

to the carrier or its transfer enjoined, it was held:

"The purpose of the legislation undoubtedly is to protect goods in transit and in possession of a carrier against seizure until the carrier should be first liberated from liability and attack by the surrender of the order bill. *The legislature has made the bill the res rather than the goods*" (italics ours).

This is a perfect analogy to the policy of the Uniform Stock Transfer Act to make the certificate of stock the *res*.

It is well established in New Jersey as elsewhere, that the by-laws both before and since the passage of the Uniform Stock Transfer Act can apply only to the formalities of transfer and registration, and cannot affect substantive rights in the stock (*Drexel v. Long Branch G. L. Company*, 3 N. J. L. J. 250).

The idea is forcibly expressed thus:

"* * * and by the Uniform Stock Transfer Act adopted in 1913 the idea of the independence of the shares as property distinct from that of the corporation, is accentuated by provisions permitting transfer by delivery of the certificate endorsed in blank, notwithstanding charter or other formerly equally binding regulations requiring transfer on the books of the corporation."

Tyler v. Dane County, 289 Fed. 843, 851.

Consequently, unless there appears to be in the New Jersey jurisdiction some impediment to the transfer or registration of the stock, it must follow as a mere matter of form or routine.

It is clear from the pleadings and agreed Statement of Facts that no such obstacle exists. There is no attachment in New Jersey, nor any allegation of fraud or theft as to the procurement of the certificate, which might, at least before the passage of the Uniform Stock Transfer Act, have been held as barring a holder of the certificate from obtaining registration as owner; nor is there anything in the transaction contrary to the public policy of New Jersey or of the United States.

There is thus nothing to be found in the *Jellenik* case contravening the right of the Public Trustee to registration upon the books of the defendant corporation. Whether a judgment determining his rights might have been rendered without his submission to the jurisdiction is a question unnecessary here to determine. Even, however, had the action been begun in the state court in New Jersey, and the Public Trustee not submitted to the jurisdiction, the court upon notice of the fact that he held the certificates would have been bound to consider him a necessary party and to determine his rights. In considering such rights it would be bound to decide in accordance with the law of New Jersey, common and statutory, the question as to whether or not the Public Trustee had acquired good title to the certificates. If so his right to registration follows automatically.

It is clear that from whatever angle we approach the matter the underlying and fundamental question is "whether a transfer of the certificates under the English law gave title to the certificates." If it did, the registration of the

shares in the name of the holder of the certificates must follow. The certificates were "documents of value," not mere evidence of the possession of some property right, but in themselves transferable by manual delivery, and unless, as in the case of other chattels, it could be shown that such delivery was unlawfully, improperly or fraudulently obtained, the title to the certificates cannot be questioned. Title to the certificates admittedly having passed, the registration becomes a mere matter of form.

The plaintiffs were never registered stockholders, and as such, "members," of the Steel Corporation. Their right at any time was merely a right to the certificates, upon presentation of which to the corporation they might require registration. When the certificates were lawfully taken from their English representatives and by English law vested in the Public Trustee, they lost everything they had.

The recent case decided by the Circuit Court of Appeals of the Second Circuit of *Miller v. Kaliwerke Aschersleben Aktien-Gesellschaft*, 283 Fed. 746, is relied upon by the appellants. In that case the Alien Property Custodian made a claim to certain securities also claimed under similar seizure by the British Public Trustee, and the court held that the Alien Property Custodian was, under the United States statutes, entitled to have new certificates issued to him, despite the fact that the Public Trustee held the old certificates, because the remedy of any person claiming any right in the certificates was by action under Section 9 of the Trading with the Enemy Act. This was a purely procedural and provisional disposi-

tion of the case in no wise affecting the ultimate rights of the British Public Trustee, and, while he appeared in the case originally, he took no appeal therefrom and was not represented in the Circuit Court of Appeals. The court disposed of the question at page 758 as follows:

"Provision was made in section 9 of the Act of October 6, 1917, for the protection of any person, not an enemy or ally of an enemy, claiming any interest, right, or title in any property delivered to the Custodian or seized by him. Section 9 of the original act was amended by the Act of July 11, 1919, 41 Stat. c. 6, p. 35, and by the Act of June 5, 1920, c. 241, 41 Stat. p. 977. It is not necessary to set out in detail herein the provisions of section 9. *It suffices to say that an examination of those provisions shows that they afford full protection to any one not an enemy or the ally of an enemy to assert his right or interest in any property which the Custodian takes into his possession. The provision made for the protection of the rights of every claimant is ample and provides due process of law.*" (Italics ours.)

The Court thus expressly disclaims any intent to determine the claim of the Trustee. How can it now be claimed to do what it expressly disclaimed; notwithstanding the categorical statement of the Court that "The decrees do not settle any property rights finally"?

Since no proceeding was ever brought under Section 9, the rights of the Public Trustee flowing from his seizure of the stock in American corporations remain as undetermined by the

American courts as they were at the time of the initiation of the *Miller v. Aktien-Gesellschaft* suit.

There is here no question between the Public Trustee and the American Alien Property Custodian, no possibility of the national sovereignty overriding the law of New Jersey as in that case where as the court said "unless for some reason these acts of Congress are unconstitutional they override the law of the State of New York in so far as the two are in conflict." The court, it is true, indulges in the usual generalities that:

"A share of stock and the certificate of the share are two very different matters. The certificate of stock is not the stock itself, but mere evidence of the stockholder's interest in the corporation. A seizure of the certificate, which may be in one state or country, is not a seizure of the stock, the *situs* of which may be in another. That the *situs* of the stock is at the domicile of the corporation, and that it makes no difference that the certificate of the stock may physically be elsewhere, is the rule in the federal courts."

In view of the decision itself, these *dicta* are comparatively innocuous, although failing to recognize the other equally settled rule enunciated in the case of *Yazoo & Mississippi Valley Railroad Company v. Clarksdale*, *supra*, that the certificate is in itself property and may be treated as such. The Alien Property Custodian acted equally upon this latter view in also seizing certificates in foreign corporations found here in German ownership. It is evident that if in the *Jellenik* case the absent holders of the certifi-

cates had purchased the certificates under a sheriff's levy, valid where made, they would have been entitled to registration.

The very law of appellants' domicile, German law, as shown in the cases annexed to the agreed Statement of Facts, holds that endorsed certificates have a *situs*. This is in entire accord with the position of the American courts cited above.

The German Imperial Court has held that endorsed certificates of the stock of the Canadian Pacific Railroad were to be classed as bearer shares and "not to be regarded as mere evidence of the transfer of the share right," (R., p. 120).

The same High Court has held the same thing as to shares in the Pennsylvania Railroad Company, (R., p. 119).

The same Tribunal specifically holds that jurisdiction as to bearer securities is at the place where the securities are located rather than at the residence of the debtor. "In Sec. 821 of the Code of Civil Procedure securities (Wertpapiere) are treated as tangible things in so far as concerns execution although essential object of the execution is not the paper in itself but the right growing out of the same. So accordingly also we must accept the proposition that the jurisdiction of property within the meaning of Sec. 23 of the Code of Civil Procedure so far as concerns bearer securities and securities as a whole is founded only at the place where the paper is located. It is also in accordance with the concept of practical affairs that property represented by securities (Wertpapiere) are located where the papers themselves are located." (R., p. 121.)

Again in a very recent case in 1923 the same court proclaims the German doctrine of *situs* of intangibles.

"It must, with regard to German law, especially be proceeded on the basis that, with a claim upon a bill, the document is the bearer of the right. The claim upon the bill is incorporated in the document inasmuch as nobody can put forward the claim unless he is in possession of the document at the same time; the right arising out of the document is inseparably connected with the right to the document and shares its legal fate (Reichsoberhandelsgericht [Imperial Commercial High Court] vol. ii, p. 250; Decisions of the G. I. C. vol. 3, p. 329; Staub-Stranz, Wechselordnung [The Law of Bills of Exchange], Introduction, note ii). The claim upon a bill is therefore, according to the conception of German law, but also according to that of daily life, situated where the document is lodged." (R., p. 123.)

The inevitable conclusion must be that as the endorsed certificates were property in England they passed by English law to the English Custodian who thus became entitled upon presentation of the certificates to be registered as the owner of the shares.

Criticism of Appellants' Situs Argument.

The first two points of appellants' brief deal entirely with their conception that the entire case before this Court, the Trustee's as well as appellants', is determinable alone upon the question whether or not the duly endorsed certificates of stock constituted a property right or

interest within the jurisdiction of the British Government. We concede that the only possible basis for any consideration of the appellants' claim must lie in the assertion that these duly endorsed stock certificates constitute nothing in the nature of a property right or interest subject to the jurisdiction of those having power thereover. This admission is found repeatedly throughout appellants' brief.

However, the position of the Public Trustee is most distinctly that in addition to the inherent jurisdiction of the British sovereignty over the shares as embraced in its control of the property rights and interests embodied in the duly endorsed certificates, the British Government has become in effect the transferee of these shares from the German claimants through the exercise of the power of eminent domain by their Government. This latter position is equally sound whether or not the duly endorsed stock certificates constitute in any degree a property right or interest. The detailed establishment of this proposition is found in the Treaty points in this brief (Points II, III, IV and V).

Appellants' points III, IV, V and VI deal at length with the subject matter replied to by the argument and authorities found in Point I of our brief.

The principles for which appellants contend are——

First, that the shares in suit had no location sufficient for the exercise of jurisdiction *in invitum* except in New Jersey, at the home of the corporation.

Second, that because the British Government did not have complete and effective control over every incident of stock ownership, including control over the corporation itself, it was impossible for that Government effectively to seize the shares.

Upon the first of these propositions are the arguments and authorities found somewhat generally in appellants' points III, IVb, IVc, IVd, IVe and IVf. Upon the second are appellants' points IVa, V and VI.

We shall briefly analyze appellants' arguments and authorities under the two foregoing heads.

(1)

As is pointed out at length in Point I of our brief, we do not contest the validity of the principle established by the *Jellenik* and other decisions elaborated upon in appellants' point III, that shares of stock may be held to have one *situs* at the home of the corporation for the purpose of determining the title to the shares. We have pointed out that these decisions go no further than to establish the proposition as above stated. That such a *situs* and for such a purpose may exist concurrently with a *situs* at the place of location of the duly endorsed certificates is, however, well established by the cases which we have cited. Particularly significant is the decision in *Griswold v. The Kelly Springfield Tire Company*, a decision of the home state of the United States Steel Corporation, which distinctly and unequivocally recognizes the existence of the two *situs* side by side.

Judge Hand has admirably stated the distinction between our case and the authorities cited in Point III of appellants' brief, as follows:

"The plaintiffs' cases do not look to another conclusion. The case of *Jellenik v. Huron Copper Co.*, 177 U. S. 1, is often cited to show that corporate shares can have no *situs* except at the domicile of the corporation. It holds nothing of the sort; only that they do have a *situs* there, which is a very different matter. In truth corporate shares have a *situs* in both places, so long as we insist upon applying to them a word drawn from the law of land and chattels which must be in a single place at a time. Because a share, if we do not wish to call it a chose in action, is at least a legal relation, and can have no spatial character except by virtue of the parties to the relation. Wherever either party is, there is the property as respects such parts of the relation as touch that party. Where the corporation is, there dividends paid and all other duties performed to which the shareholder is entitled. There also may the sovereign declare who shall be the shareholder. Acts required of the corporation as performance of those duties will be normally treated as performance elsewhere. Similarly where the shareholder is, there the share may be transferred by compulsion and perhaps, since he is subject to compulsion, by decree *in rem* even when he does not obey. There is no inconsistency in all this until one presupposes that because the share is in one place, it cannot be in any other. *Jellenik v. Huron Copper Co.*, *supra*, does not intimate anything of the sort." (R., p. 132.)

We feel constrained to call attention to the fact that the case of *Baker v. Baker*, 242 U. S.

394, is completely misapplied by appellants in this connection.

There is not one word in either the Supreme Court's decision or that of the Kentucky Court of Appeals which is authority for the proposition, for which the case is cited by appellants, that shares *cannot* have a *situs* outside the state of incorporation. In fact the inference to be drawn from this Court's decision is that on the contrary they may have such a *situs*.

The following two quotations from this Court's opinion are the only words therein bearing upon the question:

"it was ordered that she as administratrix transfer and deliver to herself as the widow of the deceased all of the personal estate in her possession, including the stock in the Kentucky corporation, *the certificates for which she held*" (at page 396).

"The present action affects only the ownership of shares of stock in a Kentucky corporation having no *situs* outside of its own state *so far as appears*, and a claim of indebtedness against the same corporation." (at page 400, italics ours.)

In that long and bitter contest the question as to the property value of certificates of stock was never raised by counsel or discussed by the Court. Had the certificates of stock in that case been in Tennessee *at the time of decedent's death*, it seems scarcely conceivable that the point should not have been somewhere discussed.

Of the numerous State and Federal decisions cited by appellants no one of them can be said to be a direct authority in favor of the proposi-

tion for which appellants must contend. In considering those decisions the distinction which is the fundamental test of this controversy must be noted. The problem with which we are confronted is not whether a given jurisdiction has by its own legislation operated upon certificates of stock in a foreign corporation, but whether such jurisdiction has the inherent power so to act and whether such action once taken will be recognized abroad. Of all of the decisions cited by appellants, State and Federal, the only one directly involving our present problem is that of *Daniel v. Goldhill Mining Company*, 28 Wash. 411. In that decision it was held, at the home of the corporation, that the foreign jurisdiction did not operate upon the certificates so as to pass title to the shares. The real basis for the decision, however, was not that the foreign jurisdiction *could not* operate upon the certificates, but that the law of the foreign jurisdiction not having been shown to permit such action, it must be presumed to be the same as the law of the home of the corporation, which did not permit such action. Many of the other decisions cited by appellants were not at all concerned with the question of jurisdiction acquired over the certificates. Those that were concerned with that jurisdiction were cases in which the law of the State having the certificates within its power was held insufficient authority for dealing with those certificates as the shares. The cases involved the construction of local statutes rather than true questions of power or jurisdiction.

The following reservation found in one of those decisions, that of *Armour Brothers Banking*

Co. v. St. Louis National Bank, 113 Mo. 12, is illustrative of the reservation which should properly have been made in all of them. It is there said in conclusion:

"It is not necessary in this case to define the limits of legislative power to authorize the seizure and sale, under judicial process for the payment of debts, of certificates of stock of foreign corporations found in this state. It is sufficient for our present purpose to say that the legislature has not yet seen proper to go that far."

In line with the foregoing discussion it should be noted that the quotation by appellants from the decision in *Ashley v. Quintard*, 90 Fed. 84, is the purest *dictum* as applied to our problem. In that case the only question considered by the Court was whether or not shares in a Michigan Corporation owned by a resident of New York constituted property in Ohio simply because the Michigan Corporation did business in Ohio. It does not appear that the certificates were in Ohio and that question was not involved. The head note from the case indicates the only question presented and decided as follows:

"Shares of stock in a corporation of one state, owned by a resident of another, cannot be reached by garnishment in a third state in which the corporation does business, by service of garnishment on the agent of the corporation in the state and of summons on the defendant stockholder by publication, in the absence of statutory provision therefor."

Appellants' decisions are not direct authorities upon the important question of inherent power to deal with the certificates.

However, assuming, *arguendo*, that the state and lower Federal authorities cited by appellants were of direct bearing upon our problem, they will be found to have been directly overruled by the more recent decisions which we have cited giving legal sanction to the modern and true conception of the property characteristics of all duly endorsed right carrying paper.

This growth in conception is aptly described in the decision of Judge Dickinson in *De Ganay v. Lederer*, 239 Fed. 568, which is affirmed by this Court and cited *supra*. He says, at page 572:

"Human language is a living thing, and not an unyielding mummy cloth in which thoughts are enwrapped. Language changes and grows, and words shift in meaning with the changing ideas of the people out of whose expressions of their thoughts through the use of words the language is evolved. It is familiar experience that things which exist at first and are spoken of as theories or mere concepts soon become recognized facts, and are given in thought and words body and substance. Physical science abounds in illustrations of this, and in both business affairs and in the law we meet with them. It is really the same tendency as the disposition to personify things, and to reduce the abstract to the concrete. This concept of property as an intangible thing belongs to this same category. A chose in action becomes a concrete book account or note. The stockholder in a corporation owns property, of which his certificate of stock is but the evidence and still exists in all its fullness, whether the certificate be lost or destroyed. A bank note is but a promise to pay, but the concept of it soon changes to that of regard-

ing it as itself concrete property, occupying spaces and having a *situs*. The same concept is readily extended to deposits in bank and to bonds, and indeed to what are known under the generic term of investments, mortgages, and ground rents, and the like. They all come to be visualized, until they have an existence as real as that of physical things. Indeed, it is allowable in common speech, and just as intelligible, to speak of a person having ground rents in America, or indeed investments in America, as it is to say he had or owns a farm in America."

And at 574:

"This, of course, is not the strictly scientific view, nor does a person speak with scientific accuracy when speaking so, but none the less they are expressing a definite thought clearly. Indeed, if a person were to speak in scientific terms of some of the commonest things of life, he would not merely be thought pedantic, but would be utterly unintelligible to many. A professor of economics would have difficulty in convincing persons who were indeed persons of intelligence that they did not have money in their pockets if they felt crisp bank notes crinkling in their fingers. The same person, if his ownership of bonds or stock was questioned, would think he had settled the dispute by producing the bonds or stock certificates. He would produce them, not as if he was bringing forth evidence of his ownership, but the very property which he owned. Laws, particularly, those by which the common people are to be guided, are to be interpreted as the common speech is understood, and are not to be translated into scientific jargon."

In *Cummings v. Clark*, 282 Fed. 300, at 305, it is held:

"The old concept of what are commonly called shares of stock in a corporation, that they are merely evidence of the right of the holder to correspondingly share in the net assets of the corporation, is no longer either the popular concept or the concept of business of what they are. They are property, not evidence of title to property; they are tangible property, which may have a location of its own. This has been held to be the case for tax purposes in *De Ganay v. Lederer*, 250 U. S. 376, 39 Sup. Ct. 524, 63 L. Ed. 1042, and is as true for other purposes."

The suggestion appears in appellants' brief upon this point that the British Law did not operate upon the certificates so as to pass the title to the shares to the Public Trustee. That the British Law did so, is an admitted fact in this proceeding, was so decreed in this very case by the High Court of Justice (R., p. 62), and is amply demonstrated by the decisions cited and quoted from in the foregoing point of our brief.

In this connection, it is interesting to notice that since the decision in *Stern v. The Queen*, 1 Queen's Bench (1896) page 211, where it was held that the certificates were a property even though "not completely operative to pass the title," the conception of the true principles has become so developed that it is now recognized that the certificates are *completely* operative to pass both the legal and equitable title (*Travis v. Knox Terpezzone Co., et al., supra*).

The only decisions cited which directly and in reality involve the question of conflict of laws

which is the basis of this case will be found to be those cited by ourselves. Principal among them are the cases of *Merritt v. American Steel Barge Co.*, *Beal v. Carpenter*, both cited *supra*, and *Mitchell v. Leland Co.*, 246 Fed. 103. In each of those cases consideration was directly given at the home of the corporation, to the inherent power of a foreign court to deal with the certificates as the shares. In each of them such power was sustained. *Mitchell v. Leland Co.*, serves also to rebut appellants' suggestion that we cite no decisions bearing upon the question of jurisdiction over unpledged certificates. In that case, decided in November, 1917, there was an appeal to the Circuit Court of Appeals for the Ninth Circuit from the District Court in Montana. Plaintiff was there suing for the registration of shares in a Montana Corporation, the certificates for which had been levied upon in the State of Washington in execution upon a judgment rendered against the registered owner. The Circuit Court of Appeals definitely held that such a levy in Washington could be made, but refused the plaintiff relief on the grounds that the levy had not been made in accordance with the laws of Washington and was in reality part of a fraudulent scheme concerning which equity would give no relief.

(2)

Appellants' second principal argument, that the British Government could not take these shares because of its lack of complete control

to enforce every right attendant thereon is very simply answered.

It cannot be seriously argued that a jurisdiction cannot operate directly upon duly endorsed or bearer negotiable paper, bearer bonds, bank notes, gold and silver certificates, etc. The decisions classifying the interests in such papers as property are legion and both the British Public Trustee and our own Alien Property Custodian have taken them over without question.

Yet the debtor in case of ordinary commercial paper, and the issuing governmental agency in the case of paper money, are no more within the control of the foreign jurisdiction assuming control over that paper than is the corporation the shares of which are seized. If appellants' contentions as to the lack of power were sound, bank notes could not be seized as property because of the impossibility of enforcing payment by the obligor thereon.

The solution is found in the *currency* value of the bank notes as the money. An identical currency as to the shares exists in the case of duly endorsed stock certificates, evidenced completely by the fact that the sole rights owned by these appellants in the shares were bound up in the certificates.

II.

The Treaty of Versailles binding upon both the British and German Governments and forming part of the law of both, has expressly ratified and confirmed the action of the British authorities in taking over the stock in question.

Not only did the original taking over by the Public Trustee of the stock certificates entitle him to such certificates and all the property rights which their possession comports, but in addition thereto the Treaty confirms and ratifies the action of the Public Trustee and all transfers to him.

There can be no doubt that, had the original German holders expressly confirmed the action of the Public Trustee in taking over their stock, they could not thereafter have questioned his title.

Yet, in contemplation of law, this is precisely what has occurred. The Government of Germany, acting for and on behalf of its nationals through the exercise of its Treaty-making power, has ceded to Great Britain all property rights or claims in regard to this stock which those nationals possessed. This was done by the following Treaty Provision:

“In accordance with the provisions of Article 297, paragraph (a), the validity of vesting orders and of orders for the winding up of business or companies, and of any other orders, directions, decisions or instructions of any Court or any Department of the Government of any of the High Contracting Parties made or given, or purporting to be

made or given, in pursuance of war legislation with regard to enemy property, rights and interests is confirmed. The interests of all persons shall be regarded as having been effectively dealt with by any order, direction, decision or instruction dealing with property in which they may be interested whether or not such interests are specifically mentioned in the order, direction, decision or instruction. No question shall be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, direction, decision or instruction. Every action taken with regard to any property, business or company, whether as regards its investigation, sequestration, compulsory administration, use, requisition, supervision or winding up, the sale or management of property, rights or interests, the collection or discharge of debts, the payment of costs, charges or expenses, or any other matter whatsoever, in pursuance of orders, directions, decisions or instructions of any Court or of any Department of the Government of any of the High Contracting Parties, made or given, or purporting to be made or given in pursuance of war legislation with regard to enemy property, rights or interests, is confirmed. Provided that the provisions of this paragraph shall not be held to prejudice the titles to property heretofore acquired in good faith and for value and in accordance with the laws of the country in which the property is situated by nationals of the Allied and Associated Powers."

*Annex to Articles 297 and 298, par. (1)
Treaty of Versailles.*

The German Government thereby confirmed and adopted these very "vesting orders." What

had been mere *ex parte* acts of the British sovereignty thus became judgments binding upon Germany and her nationals. What had been unilateral became bi-lateral. Germany thus deliberately estopped herself from questioning the validity of the very orders transferring the "shares" here in question.

In order that there could be no question or quibble as to the complete and unqualified confirmation of all the measures taken by the Custodian of Enemy Property and that his action should not be subjected to examination, review or modification in the courts, Section 3 of the Annex provides as follows:

"In Article 297 and this Annex the expression 'exceptional war measures' includes measures of all kinds, legislative, administrative, judicial or others, that have been taken or will be taken hereafter with regard to enemy property, and which have had or will have the effect of removing from the proprietors the power of disposition over their property, though without affecting the ownership, such as measures of supervision, or compulsory administration, and of sequestration; or measures which have had or will have as an object the seizure of, the use of, or the interference with enemy assets, for whatsoever motive, under whatsoever form, or in whatsoever place. Acts in the execution of these measures include all detentions, instructions, orders or decrees of Government Departments or Courts applying these measures to enemy property, as well as acts performed by any person connected with the administration or the supervision of enemy property, such as the payment of debts, the collecting of credits, the

payment of any costs, charges or expenses, or the collecting of fees.

Measures of transfer are those which have affected or will affect the ownership of enemy property by transferring it in whole or in part to a person other than the enemy owner, and without his consent, such as measures directing sale, liquidation or devolution of ownership, in enemy property, or the cancelling of titles or securities."

We have seen that the German law treated endorsed American certificates as tangibles, hence there can be no doubt that they fall within the very terms of this provision even from the German viewpoint.

The provisions above cited preclude the courts anywhere from reopening the matter and considering the validity of such transfer as between the British Government and Germany or its nationals. These provisions of the Treaty are part of the law both of Great Britain and of Germany. It was provided in the Treaty of Peace Order, 1919, that:

"The Sections of the Treaty set out in the Schedule to this *Order* shall have full force and effect as law, and for the purpose of carrying out the said Sections the following provisions shall have effect, etc." (R., p. 99).

The said schedules include the provisions above cited. The German statutes and decisions show that the Treaty of Versailles generally, and, these sections in particular, are part of the law of Germany, and hence are binding upon German nationals. It is so provided by the German law as propounded by the Imperial Court (1923):

"The action, however, must not solely be judged by German law or by the general

principles of private international law. But the specific regulation of the legal relations of the parties resulting from the provisions of the Treaty of Versailles must primarily be considered as decisive, and also for the question where the disputed claim upon the bill is legally situated, since the Treaty has become a German Imperial Law by its publication and regulation in the Imperial Law Gazette (Reichsgesetzblatt), and is therefore binding upon the residents within the German Republic too (Decisions of the G. I. C., vol. 98, p. 257)." (R., p. 125.)

Even assuming, then, *arguendo*, that the seizure of the stock certificates did not vest complete title in the Public Trustee, yet such seizure and vesting order was not a mere empty formality, but specifically purported to take possession of the stock of which these certificates were the tangible equivalents. The very terms of the vesting order provide that:

"(i) all the right, title and interest of the Head Office and Foreign Branches and of the respective Enemies and of the respective Enemy Holders to and in (a) the Scheduled Securities and any interests or dividends accrued and to accrue due thereon respectively; and (b) the Scheduled Documents of Title" (R., pp. 61-63).

be vested in the custodian. The ratification by the German law, therefore, of the act of the Public Trustee precludes and estops the former German holder from further insisting upon his ownership of the shares. By the German law, the action of the British authorities in vesting these certificates in the Public Trustee is vali-

dated and confirmed. They are, therefore, vested in the Public Trustee by and with the consent of the former holder.

In the effort to avoid this inevitable logical conclusion the appellants earnestly stress the decision of the Supreme Court of South Africa in the *Randfontein* case.

The case itself merely decides that bearer shares in a South African corporation were included in the terms of the Treaty as property within South Africa, regardless of the fact that the certificates themselves were located in Germany.

The reasoning of the court goes beyond the necessities of the decision in holding that under the Treaty bearer securities are to be considered, despite the English cases to the contrary, situate at the domicile of the corporation, at least within the intendment of the Treaty terms.

Regarding this decision it is to be observed:

(1) That it involves bringing into doubt the title of every holder of a bearer security in the Union of South Africa, and is admittedly in conflict with a long and well established series of English decisions of the highest authority which ascribe to such securities a *situs* in the place where they are found.

(2) That the decision is, to a large extent, founded upon the contention that Para. 10 of the Annex to Sec. IV, Part X, of the Treaty, having to be read in conjunction with and as ancillary to Article 297, must, in requiring bearer securities to be delivered up by Germany, be taken to have regarded such securities as being situate

in the Union. It is true that Subs. (b) of Article 297 refers to property rights and interests *within* allied territory, but it is equally true that Subs. (e) of that Article confers on an Allied State the right to charge German property not only *within* such Allied State but also *under its control*. As there can be no doubt that every corporation incorporated in accordance with the laws of an Allied State is ultimately under the control of that State, it was appropriate that Para. 10 should include the obligation to deliver up securities in German hands issued by such a corporation.

The attention of the Supreme Court of South Africa does not appear to have been called to this important provision in Subs. (e) of Article 297, and it is submitted that it throws an entirely new light upon the intentions of the Treaty framers with regard to Para. 10, and shows that the Para. is in no way inconsistent with the well established principle that the *situs* of a bearer security is to be deemed to be at the place where it is found.

Judge Hand has conclusively distinguished this *Randfontein* case, in connection with the *Kaliwerke* case, *supra* as follows:

Again, *Miller v. Kaliwerke, etc., supra*, 283 Fed. Rep. 746 (C. C. A. 2), has equally nothing to do with the facts at bar. It arose on a petition under our own Trading with the Enemy Act, ancillary to the Custodian's statutory powers to reduce property to his possession. No claim of right was good against it; all such must be made under Section Nine of that act after the Custodian gets possession of the *res*. For

that reason the court expressly reserved all questions of right, and the case decides no more than that where the corporation is there also are the shares, which indeed adds nothing to *Jellenik v. Huron Copper Co.*, *supra*. Moreover, even if the court had assumed to decide the relative rights of the United States as captor at the domicile and the United Kingdom as captor of the certificate endorsed in blank, it would not be relevant. That issue would depend upon whether the Public Trustee as successor of the German shareholder should succeed against the United States, which had jurisdiction of the corporation itself. Without suggesting any answer to that question it is quite enough to say that it has nothing to do with a situation where the Public Trustee comes into conflict only with the German shareholders.

The same may in substance be said of *Randfontein, etc., Ltd. v. Custodian of Enemy Property*, in the Appellate Division of the Supreme Court of South Africa. There the question arose of shares in South African companies which the Custodian claimed under the Treaty of Versailles which transferred to the Union of South Africa all property within that State. The court decided that the shares were within the Union and could be seized. Had the certificates been seized elsewhere and the captor presented them for registry the same question would have arisen as would have arisen in *Miller v. Kaliwerke, etc.*, *supra*, had the Public Trustee filed a claim under Section Nine of our own Trading with the Enemy Act. As it stands the case has no bearing upon those at bar." (R., p. 132).

There can be little doubt that the broad language of the Treaty ratifications was calculated to

effectuate the *intent* of the vesting orders in all cases and to render them completely operative as having passed the title to the shares in suit regardless of their strict legal *situs*.

Germany having the power to act for its nationals, the Treaty ratification is equivalent to a voluntary transfer *inter partes* of the securities in question. Moreover, both by the English and American law, proceedings vesting enemy property in the Custodian are equivalent to voluntary transfers, (see *Trading with the Enemy Amendment Act*, 1914, (Eng.) Sec. 4, subd. 3; *Trustee Act* of 1893, (Eng.), Sec. 32 *et seq.*; *Koppel Co. v. Orenstein Koppel Co.*, 289 Fed. 446, 450).

As in this case there is nothing contrary to the policy of New Jersey in recognizing transfers by Germany of the private property of its own nationals in the extinguishment of public debts (a similar policy having been pursued in the United States), and no claims of local creditors appearing, the American law will recognize such transfer by operation of British and German Treaties and statutes, regardless of the location of the property involved.

It may be suggested that the German claimant could not be bound in this respect by the action of his Government. This question we shall discuss under the next head, but it is clear that the German Government has bound itself by Treaty to the uttermost of its sovereign power to prevent any question of the validity of the action of the Public Trustee from being raised by any of its nationals.

III.

The German Government possesses the power as an attribute of sovereignty admitted by international law, to devote the property of its nationals, wherever situate, to the termination and settlement of the war. This power in the nature of Eminent Domain finds numerous precedents in modern times as exemplified in treaties entered into by the United States and has been sustained by this Court. It is recognized by authorities on international law generally and by the practice of civilized states.

Regardless of the limitations contained in constitutional law, it is recognized in international law that a Government may devote the property of its nationals to such a public purpose as bringing about peace and terminating war. This is a power in the nature of Eminent Domain possessed by every sovereign Government in virtue of its sovereignty. The United States has exercised such power. The present German Constitution provides for the exercise of the right of Eminent Domain, but the question is not one of German Constitutional law, but rather of international law and usage. This usage has long been recognized by the leading writers on international law.

"The state of a Commonwealth may often be such that either some pressing necessity will not give leave that every particular subject's quota should be collected, or else that the public may be forced to want the use of something in the possession of some private subject. It must be allowed that

the sovereign power may seize it to answer the necessity of the state."

Vattel, Droit des Gens.

This right has been recognized not only by publicists generally, but especially by German jurists. Pufendorf says:

"The sovereign power, they say, (Germans), was erected for the common security and that always will give a prince sufficient right and title to make use of the goods and fortunes of his subjects whenever necessity requires."

De Jure Naturae et Gentium.

This right has been reaffirmed and recognized by the United States:

"Notwithstanding the fact that these claims are property rights in numerous instances, claims of citizens have been absolutely destroyed so far as they existed against the foreign Governments by the action of the Executive in making a Treaty and of the Senate in ratifying it. In such cases no further action of Congress appears to be necessary so far as the complete extinguishment of the claim against the other Government is concerned."

Butler, Treaty-Making Power of the United States, v. 2, p. 293, citing numerous cases.

There have been many instances in which the United States has entered into Treaties providing for the disposition of claims of our citizens against foreign Governments or the claims

of their citizens against the United States. This appears in the first Treaty between the United States and France of 1801.

Again, by the Treaty of Washington between the United States and Great Britain, there was a similar provision relative to the claims of American citizens against Great Britain.

And comparatively recently in the Treaty with Spain, consequent upon the War of 1898, it was provided by Article 7 that:

"The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article."

As will appear, this is very similar to the article quoted from the Versailles Treaty by which Germany agrees to compensate its nationals for the loss of their claims for property or damage against the Allied and Associated nations.

For a full discussion of the whole question of and the authorities upon the absolute right of a Nation in time of war to confiscate enemy property if it will, see the decision of Judge Morris in the case of the *United States v. The Chemical Foundation*, 294 Fed. 300. That the seizures by the Allied Powers and their disposition under the Treaties do not go the length of confiscation as they well might, is admirably proved by the article by Armstrong, "*The Confiscation Myth*" in the American Bar Association Journal for August, 1923.

As held by the British Privy Council in the case of *The Blonde*, (1922) 1 A. C. 335:

"There can be no doubt that Germany was competent, on behalf of those nationals who

were German subjects within the operation of the Treaty, to make cessions which would bind them and effect a transfer of their rights of property, as if the cession had been made personally by the owner concerned."

This Court, referring to the relinquishment by the United States of the claims of its citizens against Spain by the Treaty of April, 1899, said:

"Besides, the treaty of peace between the two countries provided that 'the United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war. The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article.' *This stipulation clearly embraces the claim of the plaintiff—its claim against the United States for indemnity having arisen prior to the exchange of ratifications of the treaty of peace with Spain.*"

Hijo v. United States, 194 U. S. 315, 323, 324. (Italics ours.)

The Spanish claimant was, therefore, denied relief against the United States in the Court of Claims.

In the case of *Herrera v. United States*, 222 U. S. 558 at 574 the court held that:

"If Spanish subjects, under the authority of *Hijo v. United States*, their right of in-

demnity for the seizure and use of their vessel was taken away by the treaty between Spain and the United States."

The most recent recognition of this principle is found in the decision in *James v. Second Russian Insurance Company*, 210 App. Div. (N. Y.) 82. It was there contended that the claims of British Nationals against Russian Nationals had been released by Treaty between the British Government and the Soviets. The New York Court in commenting upon the result of this release held as follows at page 83:

"It may be that it is a necessary conclusion from the treaty relation of the Soviets and Great Britain, that under the British Law the Russian insurance companies could not owe a debt to plaintiff's assignor, the British corporation, the English Star and British Dominions Insurance Company, Ltd., subsequent to the Treaty with Great Britain, and that an assignment thereof on December 12, 1922, more than twenty months after the Treaty of London, transferred no cause of action against the Russian Insurance Company to the plaintiff; and it would be a necessary conclusion under our law, if Soviet Russia were a country recognized by the United States. Such result would come about from the exercise of the rights of eminent domain by Great Britain to take the property of its nationals—not from any action of even a recognized Soviet Government." (Italics ours.)

If the United States and other nations can by Treaty thus surrender the rights of their own citizens, their courts can scarce refuse to allow Germany to treat, in similar fashion, its own nationals.

If any residuum of doubt could at this day exist as to the sovereign power of the German Government to make effective disposition of the property of its nationals, wherever situated, it would be set at rest by the recent decision of this Court in *Cook v. Tait*, 265 U. S. 47, (May 5, 1924). Here it was held that, even within our constitutional limitations, the inherent sovereign power of a government to tax one of its citizens could not be made dependent upon his domicile, or upon the location or *situs* of his property or the source of his income in respect of which the tax was imposed, but was based upon "his relation as citizen to the United States, and the relation of the latter to him as citizen." Objections invoking the Constitution and international law were brushed aside.

If the plenary power to take, under such circumstances, the property of the individual by taxation be thus admitted, *a fortiori* the exercise of the more qualified power of eminent domain is not limited to property situate within the territorial jurisdiction of the sovereign.

IV.

The German Government in accordance with modern usage has by the very terms of the Versailles Treaty obligated itself to compensate its nationals for their property so devoted to the public use by the German Government.

By Article 297, Paragraph (i) of the Treaty of Versailles it is provided that:

"Germany undertakes to compensate her nationals in respect of the sale or retention of their property rights or interests in Allied or Associated States."

The German Government has provided by very full and precise regulations for this compensation and the rules as to the methods of payment, valuations, rates of exchange, etc. These regulations will be found in the agreed Statement of Facts, and it is unnecessary here to repeat them. They evince the careful solicitude of the German Government for the interests of its nationals in this regard and their desire to carry out this stipulation of the Treaty. It is probably true that, owing to the depreciation of the mark, the nationals have lost a large portion of their property. This, however, does not affect in any wise the legal situation. The result might have been the other way around had the mark appreciated instead of depreciated.

Whether German currency depreciated by force of inevitable circumstances or of the policy of the German Government in prolonging the struggle against the reparations payments is an entirely immaterial matter.

The German Government by such action recognizes its Treaty obligations, and the validity of the British action in making the seizures has thus been definitely confirmed by the Treaty and the course of the German Government thereunder.

In the correspondence between the German delegation and the Allied and Associated representatives, the former objected that:

"It is not legitimate to use the private property of German nationals to meet the obligations of Germany."

to which the Allied and Associated Powers replied as follows:

"As regards the first objection, they would call attention to the clear acknowledgment by Germany of a pecuniary obligation to the Allied and Associated Powers, and to the further circumstance that the immediate resources of Germany are not adequate to meet that obligation. It is clear duty of Germany to meet the admitted obligation as fully and as promptly as possible and to that end to make use of all available means. The foreign investments of German nationals constitute a class of assets which are readily available. To these investments the treaty simply requires Germany to make prompt resort.

"It is true that, as a general principle, a country should endeavour to avoid making use of the property of a part of its nationals to meet state obligations; but conditions may arise when such a course becomes necessary. *In the present war Allied Powers themselves have found it necessary to take over foreign investments of their nationals to meet foreign obligations, and have given their own domestic obligations to the nationals who have been thus called upon to take a share, by this use of their private property, in meeting the obligations of the State.*

"The time has arrived when Germany must do what she has forced her opponents to do. The necessity for the adoption of this course by Germany is clearly understood by the German peace delegates, and is accepted by them in the following passage, quoted textually from their note of the 22d of May;

'The German peace delegation is conscious of the fact that under the pressure of the burden arising from the peace treaty on the whole future of German economic life, German property in foreign

countries cannot be maintained to its previous extent. On the contrary, Germany, in order to meet her pecuniary obligations, will have to sacrifice this property abroad in wide measure. She is prepared to do so.'

"The fundamental objection mentioned above is completely answered by the note itself."

B. M. Baruch, The Making of the Reparation and Economic Sections of the Treaty, pp. 338, 339, 340. (Italics ours.)

See also *The Reply of the Allied and Associated Powers to the Observations of the German Delegation on the Conditions of Peace*, pp. 293, 294, Published by His Majesty's Stationery Office:

"(b) The German Delegation maintains in the note of the 22nd May that there is only the appearance of reciprocity in regard to the settlement of enemy property, and this objection is developed in the Annex to the Remarks. The objection, however, arises from a confusion between two entirely different matters. As regards exceptional war measures taken in the different countries in respect of enemy property, there is a reciprocal provision, these exceptional war measures being confirmed on both sides. Quite a different matter is that of the mode in which enemy property shall be dealt with thereafter. German property, as is admitted in the German Note, must serve towards meeting Germany's obligations to the Allies. The compensation to the German property-owner must be made by Germany itself. In this respect there can be no question of reciprocity."

"(d) The method of using this property laid down by the Treaty cannot be considered, either in principle or in the method of its application, as a measure of confiscation. Private German interests will only be injured by the measures contemplated so far as Germany may decide that they shall be, since all the proceeds of German property will be carried to the credit of Germany, who is required to compensate her own nationals, and will go to reduce her debt to the Allied and Associated Powers." (Italics ours.)

In accordance with the time-honored rule of international law, the German Government thus devoted certain property rights belonging to its nationals to the achievement of peace. In accordance with modern usage, the Treaty stipulated for compensation to said nationals for the rights which their sovereign had appropriated. No foreign court can inquire into the measure of compensation meted out by the German Government to such subjects.

The German Government, as is shown by the agreed Statement of Facts, receipted for the proceeds of sale of some securities similarly situated, which proceeds have been paid into the German Clearing Office and credited to the German Government. That Government has already made certain payments to its nationals on account of the proceeds of such securities (R., p. 69). This action unequivocally confirms the provisions of the Treaty and the validity of the specific seizures here involved. It is obvious that these provisions and the actions of the German Government, taken in pursuance thereof, are wholly incompatible with any claim upon the part

of a German national to retake from the British Public Trustee the certificates in his hands.

There is here, moreover, a very significant confirmation by the German Government itself of our contention that these very securities were contemplated by the Treaty provisions in question. Proceeds of American securities so seized and sold have been accepted by Germany as credits under the Clearing Office system established by the Treaty. Surely no American Court at the behest of a German national is at liberty to question the construction placed upon the Treaty by both of the High Contracting Parties not only in words, but by their very acts.

It is now too late to claim that the stock certificates were not property, had no location in England and, therefore, could not be affected by the Treaty provisions. This construction would be (1) contrary to German law itself as shown above, (2) contrary to the language of the Treaty, and, (3) contrary to the acts of the parties in dealing with the proceeds of such securities.

We are thus confronted not by an abstract theory, but by a concrete situation.

For several years no question was raised as to the title to these securities. When some of them were sold, the proceeds were receipted for in the ordinary course of business by the German Clearing Office precisely as in the case of other credits accorded by the British office to the German office. No distinction of any kind was raised, or sought to be raised. Credits for the securities were received and some payments have already been made to German nationals on ac-

count of the securities of which they were deprived by the War legislation of Great Britain and the Treaty between the two Governments.

It would be difficult to find a demonstration more absolute of the understanding, not only of the British and German Governments but of their nationals generally, that the securities here in question were property validly seized and falling within the Treaty disposition.

The true nature of the procedure is admirably stated by Mr. Justice Romer in *Luxardo v. Public Trustee* (1924) 1 Ch. 1 at p. 10 *et seq.*, as follows:

"The Treaty, as I understand it has adopted the method, usual in commerce, for discharging the liability of a merchant resident in Austria to one resident in this country. . . . The Austrian debtor would buy in Vienna a bill of exchange on London. In other words he would buy from a resident in Austria an asset that could be collected in England and would transfer that asset to his English creditor in discharge of his liability. . . . This method on a larger scale has been adopted by Art. 249 and the annex for the discharge of the liability of the Austrian Government to this country and its nationals. Austrian Nationals had assets in this country that could be easily realized here. These assets will be retained and liquidated by the British Government . . . and the proceeds will be credited to Austria. . . . Austria agrees to compensate her nationals in respect of their property so retained and liquidated. . . . The effect of all this is in short that Austria purchases compulsorily from her Nationals their property in this country and hands out that property to its British creditors in part

discharge of its liability to them. No confiscation of Austrian nationals' private property is intended or effected."

The provision of the Austrian Treaty here considered (Art. 249) is precisely the same as Art. 297 of the Treaty of Versailles.

The claim of the German Banks was an evident afterthought, predicated upon legal abstractions and subtleties, contrary to the actions and intentions of the Treaty-makers as of the officials, British and German, in dealing with the securities or their proceeds. A decision in favor of the German claims herein would necessarily invalidate the actions of both Governments through their Clearing Offices, and necessitate the readjustment of the indebtedness, contrary to the certain intentions and apparent desires both of Great Britain and Germany.

The courts of the United States should surely decline to reinstate the claims of German nationals contrary to the expressed intention and actions of their own Government, in spite of the provisions of the Treaty of Versailles, confirmed by that of Berlin, and after a settled course of international dealing extending over five years.

It is scarce probable that a court of the United States should assume power so to revise the Reparations and Clearing Office budgets, English and German, as to eliminate from their operations large amounts of securities which the parties hitherto have treated as entering into them.

That some such attempt might be made by German nationals was fortunately foreseen, and special provision therefor made, as shown in the following points, V and VI.

V.

The Treaty of Versailles contains a covenant binding these appellants not to question the Public Trustee's title.

It is provided in the Treaty of Versailles, Article 298, Annex, Paragraph 2, that:

"No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of such a Power by Germany or by any German national wherever resident in respect of any act or omission with regard to his property, rights or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power."

It is here again obvious that the parties to the Treaty intended that the settlement of the property questions therein provided for should be final and definite, and they did all that could humanly be done to preclude an era of interminable litigations.

As between British and German claimants, therefore, the situation here must be viewed as though the one time German owner had not only transferred the shares in suit to the British Government, but had also given that government a general release of all claims against its title. The German Government possessing, as a sov-

foreign attribute, the right to deal with this property, in so far as it belonged to its nationals, possessed the consequent right to preclude its nationals from litigating any claims of this kind in any court, domestic or foreign. Were this in the domain of private law, we might characterize it as "a covenant not to sue." In this case the covenant is entered into by the Government on behalf of its national, but it is binding upon him and effectively prevents him from suing.

This clause of the Treaty demonstrates the intention of depriving the German appellants of all *procedural* as well as *substantive* rights with regard to this stock.

VI.

The Treaty of Berlin, under the principles of international law, has adopted into American law, for the benefit of our Associates, the ratifications and covenants of the Treaty of Versailles as against Germany and its nationals.

As appears from the foregoing points, there is no doubt of the existence, as between the British Government and these German Nationals, of a confirmation of the title of the former in and to the shares in suit, and in addition of an express covenant not to question that title in any court in the world.

Had the Treaty of Versailles been directly ratified by the United States, there would be no possibility of questioning the complete effect of the ratifications and covenants of that Treaty as integral parts of American law upon which the Public Trustee could directly rely.

However, these sections of the Versailles Treaty were, with others, definitely incorporated by reference into the Treaty of Berlin for the benefit of the United States and its nationals.

Article II, Sec. I, Treaty of Berlin.

The complete effect of this inclusion as a ratification and confirmation of titles in favor of the United States, is established by the American decisions construing the incorporated provisions. Those decisions, as bearing upon the nature and extent of the ratifications, are also illustrative as showing the construction to be placed upon those provisions as parts of the Versailles Treaty independent of the Berlin Treaty.

In *United States v. Chemical Foundation*, 294 Fed. 300 at 319 it is held:

"The price at which property so seized is sold is not decisive of the amount of indemnity, if any, that will be paid to the original enemy owner for such seizure and sale. In the matter of indemnity the courts are without jurisdiction. That is a matter for other departments of the government. It is said in *Young v. United States*, 97 U. S. 39, 60 (24 L. Ed. 992): ' * * * An aggrieved enemy must look alone for his indemnity to the terms upon which he agrees to close the conflict.' By the Treaty of Berlin, Germany gave to the United States and the United States accepted the benefits of the Treaty of Versailles. By the latter Treaty it was provided that as between the Allies and Associated Powers, or their nationals, on the one hand, all the exceptional war measures, or measures of transfer, or acts done

or to be done in execution of such measures, in paragraphs 1 and 3 of the Annex, should, with certain reservations not here pertinent, be considered as final and binding upon all persons. Treaty of Versailles, part X, art. 297(d). By paragraph 1 of the Annex to that article of the Treaty the validity of all orders, directions, decisions or instructions made or given or purporting to be made or given with regard to enemy property, rights and interests was confirmed, and it was there provided that no question should be raised as to the regularity of a transfer of any property, rights, or interests dealt with in pursuance of any such order, direction, decision, or instruction. Furthermore by paragraph (i) of the same article of the treaty Germany undertook to compensate her nationals in respect of the sale or retention of their property, rights or interests in Allied or Associated states. Manifestly all claims of Germany and Germany's nationals to the property in suit are barred. *Herrera v. United States*, 222 U. S. 558, 574, 32 Sup. Ct 179, 56 L. Ed. If Germany or Germany's nationals are incidentally suffering from the exercise by the United States of its constitutional powers and its confirmed acts, it is for Congress, not for the executive or for the courts, in a suit prosecuted by the Attorney General or otherwise, to determine whether under the circumstances of the particular case justice requires that compensation or additional compensation be made. *Union Bridge Co. v. U. S.*, 204 U. S. 364, 403, 27 Sup. Ct. 367, 51, L. Ed. 523."

To the same effect are the decisions in *Junkers v. Chemical Foundation, Inc.*, 287 Fed. 597, and *Lange v. Wingrave*, 295 Fed. 565.

This incorporation of these provisions of the Treaty of Versailles into the Treaty of Berlin however, has a more far reaching result than that of embodying those ratifications and immunities into American Law merely for the benefit of Americans, among whom is, of course, included the appellee, the United States Steel Corporation.

Under international law the immunities created by a Treaty of one or more co-belligerents with the common enemy, are held to apply to the Associated Powers jointly. The extent of this rule is admirably illustrated by the decision in the case of *The Resolution*, 2 Dall. (U. S.) 1 and 2 Dall. (U. S.) 19. It was there held:

"From the very nature of the connection between allies, their compacts and agreements with the common enemy must bind each other, when they tend to accomplish the objects of the allies. Both nations have one common interest and one common object. If such agreements, when correspondent to the terms upon which the alliance is formed, and calculated for the attainment of the views and designs which gave birth to it, do not bind the ally, then the consequence would be, that the ally would reap all the fruit and advantages of the compact, without being subject to the terms and conditions of it; * * *." (At page 15).

Upon rehearing in that case the Court said:

"The articles of capitulation bind Great Britain, France and America. It is a solemn compact or treaty. All the parties to it, the citizens of each nation, are morally bound by it; * * *." (At page 24).

The existence of this principle seems recognized, at least tacitly, by the United States Government, in the care taken in *Sections 2 and 3 of Article II* of the Treaty of Berlin, to specify the provisions of the Treaty of Versailles by which this Government shall *not* be bound.

The United States, therefore, having incorporated the ratifications and covenants of the Versailles Treaty into her own Treaty, must be held to have done so in such manner and degree as to render those provisions operative in America under the Berlin Treaty, in favor of our Associates as against the common enemy and its nationals.

The Treaty of Berlin is, of course, the Supreme law of the land, and overrules prior State and Federal statutes where inconsistent.

Art. VI, U. S. Constitution.

U. S. Co. v. Lloyds, 291 Fed. 889.

Geofroy v. Riggs, 133 U. S. 258.

It must result, therefore, as a direct consequence of the foregoing principles of international law and municipal law as applied to the provisions of the Treaty of Berlin, that such Treaty has made a part of American Law enforceable in our Courts, the provisions of the Treaty of Versailles creating and protecting the title of the Public Trustee as Custodian of Enemy Property for England and Wales in and to the shares in suit.

Criticism of Appellants' Treaty Argument.

Appellants do not, as in fact they could not seriously, argue that there was any lack of power in their Government to transfer their shares by Treaty. Their only argument is in effect that there was no *intent* in their Government to so transfer these shares. If the wording of the Treaty were not so clear to transfer every right or interest of Germans which the Allied Powers had even attempted to reach "in whatsoever form * * * and in whatsoever place," and if there existed any room for doubt as to the *intent* of the parties to the Treaties of Versailles or Berlin, the question would be finally determined by the practical construction placed by Germany and Great Britain thereon, which appellants have failed to mention.

Both Germany and Great Britain have, as is heretofore pointed out in detail, construed the Treaty of Versailles as having transferred to Great Britain shares of stock of former German owners in American corporations identically situated with those in suit.

The following principles governing the construction of Treaties are amply sustained by authority:

"In construing the language of Treaties, the courts will adopt the same general rules which are applicable in the construction of statutes, contracts and written instruments generally, in order to carry out the purpose and intention of the makers." * * * * *

"In construing treaties, the court is guided by the intention of the parties in de-

termining any questions in reference to them. If the intention is clear and free from doubt, the necessity for construction does not arise, the intention governing the court." * * * *

"The construction adopted by the parties to the treaty should, as a general rule, be followed unless the terms of the instrument compel a different construction. Where the mutual construction contravenes the language of the treaty, and the rights of third parties have intervened, the language will be taken as governing."

Am. & Eng. Encyc. of Law, Vol. 28, pp. 488, 490. (Italics ours.)

In the present instance the practical construction placed by the makers upon the Treaty of Versailles is in complete harmony with the Treaty terms and as no rights of third parties have intervened, must be held absolutely conclusive as to the intent of the Treaty.

To appellants' suggestion of confiscation, we need only allude to the facts that, as is demonstrated in the foregoing points of our brief, this taking of German property is in no sense a confiscation, and if it were considered to be a confiscation there is not the slightest doubt of the existence of the absolute right of a nation to so confiscate enemy property (*United States v. Chemical Foundation, supra*).

Appellants also make a suggestion concerning the possible refusal of our Courts to give effect to these seizures as by some analogy to the refusal of one nation to enforce the penal laws of another. The answer to this suggestion is funda-

mental. If the certificates constituted property in Great Britain, as we maintain they do, no foreign nation will challenge the effect of the operation of the laws of Great Britain upon such property (*American Banana Co. v. United Fruit Co.*, 213 U. S. 347; *Luther v. Sagor* (1921), 2 K. B. 532). Even though the certificates did not constitute property in Great Britain, their transfer by Treaty would not be questioned abroad. International Treaties are never placed in the category of penal legislation and are given effect everywhere in accordance with their intent.

Appellants contend that intangibles or "incorporeal things" are not subject to seizure or capture in war, and quote at length from *Phillimore's International Law* (Brief, p. 59) on this subject. Their argument on this point ignores the modern development of the law governing paper securities and its application by the practice of nations and the Treaty of Versailles. Moreover, the German Imperial Court, the highest tribunal of appellants' own nation, has expressly determined this point adversely to appellants' contention, in *B. & Sohne v. Baux*, 107 German Imperial Court (Civil Reports) 43, printed in full at pp. 123 *et seq.* of this Record.

In this case a German Bank had accepted at its London Branch a bill of exchange, which was endorsed to a German and held by him in Germany during the War. The holder sued upon the bill in Germany. The Trial Court held that he could not recover on the ground that the bill had been accepted in England and was payable there, and that the right represented thereby was, therefore, property in England and subject to the charge of

the Treaty. The Imperial Court, however, held that the bill of exchange, being a paper security, was property in Germany where it was situated, but that, in view of Art. 297(d) and the Annex to Arts. 297 and 298 of the Treaty, the sole question was whether England had actually taken or issued any war measure charging the claim upon the bill. The Imperial Court remanded the case for the ascertainment of this fact. In doing so, it said:

"If such claims upon bills have been actually charged by England, this measure must be considered as binding upon German Nationals as well, because it is possible that such claims too may be regarded as situated in England in view of the principles authoritative for the application of the Treaty of Versailles. *If such measure, according to English law in war-time, has the effect that the charge prevents a German creditor from bringing an action for his claim in Germany—then this must be acknowledged as authoritative in Germany as well.*"

(R., p. 126, italics ours.)

"The decision cannot be reached but after full knowledge has been obtained of the disputed English measures which, as stated above, are binding upon Germany and her nationals too, * * *."

(R., p. 127.)

This decision shows that Germany fully recognizes three of the principal propositions of law supporting the Public Trustee's case, namely:

(a) That a property right represented by a paper security has a *situs* where the paper is

situated, for the purpose of seizure or capture in war.

(b) That all of England's war measures for the seizure, vesting and charging of intangible property were effectual, and were ratified and confirmed by the Treaty.

(c) That by reason of the Treaty, the scope and effect of English war measures and the property upon which they may and do operate as against German nationals, are to be determined by their *intent* and the English law.

VII.

The United States has no interest in the controversy.

The defendant, United States Steel Corporation, deemed itself under a duty to query whether there are "rights of the United States involved in this suit." Any such potential rights are predicated upon Section 297, subdivision (b) of the Versailles Treaty.

We submit that there is a short and conclusive answer to this cautious conjecture on the part of the Steel Corporation, in addition to the answer which their learned counsel suggests regarding the extraordinary, and, to us, ridiculous situation which would arise if all property in the United States which had ever been "infected" with German ownership should forever become inalienable.

It is an accepted principle regarding the construction of Treaties that where the provisions

thereof are not self-operative to effect a possible change of rights, local legislation is requisite to create such rights, and that in the absence of such local legislation, the Courts must view the subject before them in the light of the law as it exists without regard to the provisions of the Treaty. This principle is thus expressed in the decision by Chief Justice Marshall in the case of *Foster v. Neilson*, 27 U. S. 293 at page 313:

"A treaty is, in its nature, a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished; especially, so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument. In the United States, a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract, before it can become a rule for the court."

This rule, the existence of which has never been questioned, is thus stated by *Moore*, Vol. V, p. 222 of his *Digest of International Law*:

"While a treaty is the supreme law of the land, and operates as such in all matters not requiring legislative action, yet, when made dependent on legislative action, it does not

take effect until such action is had (italics ours).

Poster v. Neilson, 2 Pet. 253; *United States v. Percheman*, 7 Pet. 51; *Garcia v. Lee*, 12 Pet. 511; *Haver v. Yaker*, 9 Wall 32; *Turner v. Baptist Union*, 5 McLean 344; *Bartram v. Robertson*, 15 Fed. Rep. 212."

That the provisions of the Treaty of Versailles as incorporated into the Treaty of Berlin, which it is suggested have created a possible right in the United States herein, are wholly inoperative to do anything of that nature in the absence of American legislation, must be clear from the words of the Treaty which provide that the property *may* be charged by the United States. That the Treaty only *contemplates* and *authorizes*, but does not *create* a charge, is shown by the decision of the English Court in *Stoeck v. Public Trustee*, (1921) 2 Ch. 67, at page 73:

"The charge authorized and contemplated by the Treaty of Peace *is created* and made effective by (amongst others) the following provisions of the Treaty of Peace Order
....."

The right of the United States is thus shown to be at most an option to be exercised by Congress. The only action of Congress has been to release some portion of the property heretofore seized; the remainder is retained in the hands of the United States. This action would clearly appear as the exercise of an option to refrain from further seizures. The right of the Alien Property Custodian to make any further seizures under

existing legislation ceased on July 2, 1921 (*Miller Rouse*, 276 Fed. 715).

Any other result would lead to an impossible situation which the Court could not seriously envisage as within the intention either of the Treaty-makers or of Congress.

Moreover, at the time this Section of the Versailles Treaty was adopted by the United States, the seizure here in question had already been made and definitely confirmed by the very provisions of the Versailles Treaty adopted by the Berlin Treaty.

The foregoing thought is so aptly phrased by Judge Hand in his opinion herein, that we quote from him here, adopting his argument as our own:

"The United States by hypothesis must claim under the treaty, and its rights would be in devolution from those of the plaintiffs. If, as I believe, those rights had already ended before the treaty was made, it is difficult to see how the United States, which may not claim as captor, could succeed as grantee" (R., p. 129).

It is, therefore, scarce arguable that the framers of the Berlin Treaty should have intended to include within its purview property already disposed of in an allied country by the allied law and by the precise Sections of the Versailles Treaty, the advantages of which were sought for and acquired by the United States.

The Steel Corporation has not appealed from the decrees, and has therefore acquiesced in them and recognized that they adequately and properly dispose of this question, which, it is obvious, was raised only through excess of caution.

CONCLUSION.

The decrees herein, adjudging:

1. That the Public Trustee is vested with full ownership of the stock in controversy,

2. That the Steel Corporation should transfer the stock in controversy to the Public Trustee or his nominee without any reservation or exception upon presentation of the endorsed certificates,

should be affirmed.

Respectfully submitted,

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
MAHLON B. DOING.

**DIRECTION DER DISCONTO-GESELLSCHAFT v.
UNITED STATES STEEL CORPORATION, PUBLIC
TRUSTEE, EGREMONT JOHN MILLS, ET
AL.**

**BANK FÜR HANDEL UND INDUSTRIE v. UNITED
STATES STEEL CORPORATION, PUBLIC TRUS-
TEE, ENGLISH ASSOCIATION OF AMERICAN
BOND AND SHAREHOLDERS, LTD., ET AL.**

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.**

**Nos. 676 and 677. Argued January 9, 1925.—Decided January 26,
1925.**

1. Certificates of shares in a New Jersey corporation, endorsed in blank and owned and held by German corporations, were seized

in London during the late war by the Public Trustee, a corporation sole appointed under the English law to be custodian of enemy property. *Held* that the ownership of the paper was dependent upon the law of the place where it was at the time, viz., England, and, as the things done in England transferred the title to the certificates to the Public Trustee by English law and as, by the law of New Jersey and the law of England, the owner of such certificates may write a name in the blank endorsement and thus entitle the nominee to obtain registration on the books of the corporation and issuance of new certificates to himself, the Trustee was entitled to pursue this cause as against the German corporations, there being no assertion of power by the United States to the contrary. P. 28.

2. Consequently, a decree of the District Court recognizing this right and directing the New Jersey corporation to issue new certificates to such nominee on surrender of the old ones properly endorsed did not deprive the German corporations of property without due process of law. *Id.*
300 Fed. 741, affirmed.

APPEALS from two decrees of the District Court in suits brought by the appellant German corporations to establish their titles to shares of stock of the Steel Corporation, the certificates for which, endorsed in blank, were seized at London during the War and passed to the Public Trustee of England, as custodian of alien property. The defendants were the Steel Corporation, the Public Trustee, and stockholders of record who disclaimed interest. The title to the shares, with the right to registration, and accrued dividends, was adjudged to be in the Public Trustee.

Mr. John Weld Peck and *Mr. John Wilson Brown, III*, with whom *Mr. Alfred K. Nippert* was on the briefs, for appellants.

Our entire case is based on the proposition that a seizure of certificates in Great Britain does not constitute a seizure of the shares of the New Jersey corporation represented thereby. *Chicago Rock Island Co. v. Sturm*, 174 U. S. 710.

The basis of jurisdiction is actual power and its existence must be determined by close adhesion to the actual facts.

The question here is not as to where fictions of convenience have, from time to time, thrown shares for purpose of taxation, administration and the like.

The question is: Where can power be exerted so as actually, irrevocably and effectively to subject all that there is of a share of stock to that power? The answer is, obviously: Where the corporation is and there only.

Jurisdiction of property, separate from its owner, can be acquired and exerted only when, and to the extent, that such property is actually within the territorial jurisdiction. *Pennoyer v. Neff*, 95 U. S. 714; *Boswell v. Otis*, 9 How. 336; *Cooper v. Reynolds*, 10 Wall. 308; *McElmoyle v. Cohen*, 13 Pet. 312; *D'Arcy v. Ketchum*, 11 How. 165; *Thompson v. Whitman*, 18 Wall. 457; *McDonald v. Maybee*, 243 U. S. 90; *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194.

A seizure of shares of stock, to be effective, must be real and actual as opposed to anything constructive. *Miller v. United States*, 11 Wall. 268; *Phoenix Bank v. Risley*, 111 U. S. 125; *Chase v. Wetzlar*, 225 U. S. 79.

Since a share of stock is intangible, incorporeal (*Miller v. Kaliwerke*, 283 Fed. 746), and in the nature of a chose in action (*Jellenik v. Huron Copper Co.*, 177 U. S. 1), it is fundamentally incapable of manupcaption. Yet it is clear that in the absence of statute one in position to compel the issuing corporation may, by compulsion, derive all the fruits of any particular shareholder's rights, and neither the shareholder nor any other not having power to compel the corporation can oust from that position of advantage. Therefore it seems further clear that it is only at the corporate domicile that a seizure of a share, in any sense real and actual, can be made.

Shares similar to those in suit have such existence at the corporate domicile as to found jurisdiction *in rem*, and may be levied upon, attached, and garnished by service on the corporation, although the certificate, its holder, and its owner be outside the jurisdiction. *Jellenik v. Huron Copper Mining Company*, 177 U. S. 1; *Hudson Navigation Company v. Murray*, 223 Fed. 466; *Schultz v. Diehl*, 217 U. S. 594; 54 Fed. 896; *Ashley v. Quintard*, 90 Fed. 84; *Einstein v. Georgia Southern Ry. Co.*, 120 Fed. 1008; *Gundry v. Reakirt*, 173 Fed. 167; *Shaw v. Goebel Brewing Company*, 202 Fed. 408; *Gideon v. Representative Securities Corporation*, 232 Fed. 185; *Harvey v. Harvey*, 290 Fed. 653; *Andrews v. Guayaquil Ry.*, 69 N. J. Eq. 211, (affirmed) 71 N. J. Eq., 768; *Sohege v. Singer Mfg. Co.*, 73 N. J. Eq., 567; *Amparo Mining Co. v. Fidelity Trust Co.*, 75 N. J. Eq., 555.

The *Jellenik* decision has been applied and strictly followed by the federal courts in determining the validity of the seizure of shares of stock by the Alien Property Custodian of the United States under the provisions of the Trading with the Enemy Act. *Columbia Brewing Co. v. Miller*, 281 Fed. 289; *Garvan v. Marconi Wireless Co.*, 275 Fed. 486; See particularly *Miller v. Kaliwerke, etc.*, 283 Fed. 746.

Shares cannot be captured except at some domicile of the corporation where transfer can be enforced. The presence of endorsed certificates beyond such domicile is not enough. *Baker v. Baker*, 242 U. S. 394; *Ashley v. Quintard*, 90 Fed. 84.

The English cases and writers upon international law sustain this view. Dicey Digest of Law of England; *The Attorney General v. The New York Breweries Co.*, 1 Q. B. (1898), 205; *Attorney General v. Bouwens*, 4 Meeson & Welsby, 171-191; *Stern v. The Queen*, 1 Q. B. (1896) 211; *Winans v. The King*, 1 K. B. (1908), 1022; *New York Life Insurance Co. v. Public Trustee*, 40 Times L. R. 430; *Cassidy v. Ellahorst*, 110 O. S. 405, 1924.

That the certificates were endorsed does not alter the case. *Colonial Bank v. Hepworth*, L. R. 36 Ch. Div. 36, 53, 54.

Yazoo and Mississippi Railroad v. Clarksdale, 257 U. S. 10, presented no question of the situs of shares.

The weight of American authority is that foreign attachment does not lie against shares of a non-resident corporation merely by the seizure of the certificates. *Baker v. Baker*, *supra*; *Christmas v. Biddle*, 13 Pa. St. 233 (1850); *Winslow v. Fletcher*, 53 Conn. 391; *Tweedy v. Bogart*, 56 Conn. 419; *Sheep & Wool Co. v. Traders Bank*, 104 Ky. 90; *Gundry v. Reakirt*, 173 Fed. 167; *Pinney v. Neville*, 86 Fed. 97; *Armour Brothers Banking Co. v. St. Louis Nat. Bank*, 113 Mo. 12; *Richardson v. Bush*, 198 Mo. 174; *Ireland v. Globe Milling Co.*, 19 R. I. 180; *Maertens v. Scott*, 33 R. I. 356; *Daniel v. Gold Hill Mining Co.*, 28 Wash. 411; *Reid Ice Cream Co. v. Stephens*, 62 Ill. App. 334; *Smith v. Downey*, 8 Ind. App. 179.

International law is clear and sweeping in its principle that incorporeal things including rights can be seized only by seizure of the corporeal thing to which the right is attached.

Were that not so, any sovereign might by his own laws situate incorporeal things within his jurisdiction and then proceed under color of right established by his law to possess the thing corporeal, in whatsoever country it was situate. *Phillimore's Int. L.* (3d Ed.), Vol. 3, at page 817 et seq.; *The Antelope*, 10 Wheat. 66; *Wisconsin v. Pelican Insurance Co.*, 127 U. S. 265.

The principles here considered are strikingly like those involved in *Baglin v. Cusenier*, 221 U. S. 581.

No confirmations of the treaty of Versailles apply.

Mr. Wm. Averell Brown, with whom *Mr. Kenneth B. Halstead* was on the brief, for United States Steel Corporation.

Mr. Frederick R. Coudert, with whom *Mr. Howard Thayer Kingsbury* and *Mr. Mahlon B. Doing* were on the brief, for Public Trustee.

MR. JUSTICE HOLMES delivered the opinion of the Court.

These are bills in equity in similar form each raising the same question. In each the plaintiff is a German corporation and the interested defendants are the Public Trustee, an English corporation sole appointed to be custodian of enemy property during the late war, and the United States Steel Corporation. Each plaintiff claims one hundred identified shares in the Steel Corporation and seeks to be declared owner of the same, to have new certificates issued to it and the outstanding certificates cancelled on the books of the corporation, and to recover past dividends declared but unpaid. The cases were submitted by them upon an agreed statement of facts, and the District Court after a discussion that leaves nothing to be added dismissed the bills. The decree declared the Public Trustee to be entitled to the shares and directed the Steel Corporation to issue new certificates to his nominee on surrender of the old ones properly endorsed. 300 Fed. 741.

As is usual with shares which it is desired to deal in abroad these shares were registered by tens on the Steel Corporation's books in the name of some well-known broker or the like domiciled in England, and the assignment and power of attorney to transfer the shares printed on the back of the certificate was signed by the broker in blank so that the certificate passed from hand to hand. The Disconto-Gesellschaft had bought a hundred shares and held the certificates thus indorsed in its London branch. The Bank für Handel had bought the same number and pledged them with an English banking house in a running account. On March 27, 1918, an order of the Board of Trade in pursuance of statutory powers purported to vest in the Public Trustee the rights of the

Disconto-Gesellschaft to the shares and the right to take possession of the documents of title. On April 30, 1917, a similar order had been made as to the Bank für Handel's stock. The Public Trustee thereupon seized the certificates in London as was regular and lawful under the laws of England while the war was going on and freed the pledged securities from the lien upon them by a sale of other stocks. He claims a title confirmed by the Treaty of Berlin and the Treaty of Versailles. The plaintiffs set up that a decree recognizing his title would deprive them of their property without due process of law.

The appellants, starting from the sound proposition that jurisdiction is founded upon power, overwork the argument drawn from the power of the United States over the Steel Corporation. Taking the United States in this connection to mean the total powers of the Central and the State Governments, no doubt theoretically it could draw a line of fire around its boundaries and recognize nothing concerning the corporation or any interest in it that happened outside. But it prefers to consider itself civilized and to act accordingly. Therefore New Jersey having authorized this corporation like others to issue certificates that so far represent the stock that ordinarily at least no one can get the benefits of ownership except through and by means of the paper, it recognizes as owner anyone to whom the person declared by the paper to be owner has transferred it by the indorsement provided for, wherever it takes place. It allows an indorsement in blank, and by its law as well as by the law of England an indorsement in blank authorizes anyone who is the lawful owner of the paper to write in a name, and thereby entitle the person so named to demand registration as owner in his turn upon the corporation's books. But the question who is the owner of the paper depends upon the law of the place where the paper is. It does not depend upon the holder's having given value or taking without notice of

outstanding claims but upon the things done being sufficient by the law of the place to transfer the title. An execution locally valid is as effectual as an ordinary purchase. *Yazoo & Mississippi Valley R. R. Co. v. Clarksdale*, 257 U. S. 10. The things done in England transferred the title to the Public Trustee by English law.

If the United States had taken steps to assert its paramount power, as in *Miller v. Kaliwerke Aschersleben Aktien-Gesellschaft*, 283 Fed. 746, a different question would arise that we have no occasion to deal with. The United States has taken no such steps. It therefore stands in its usual attitude of indifference when title to the certificate is lawfully obtained. There is no conflict in matter of fact or matter of law between the United States and England and therefore *Baker v. Baker, Eccles & Co.*, 242 U. S. 394, does not apply. We deem it so plain that the Public Trustee got a title good as against the plaintiffs by the original seizure that we deem it unnecessary to advert to the treaties upon which he also relies or to the subsequent dealings between England and Germany showing that both of those nations have assumed without doubt that the Trustee could sell the stock. We think it unnecessary also to repeat what was said below as to the possibility of the United States making a claim at some future time.

Decree affirmed.